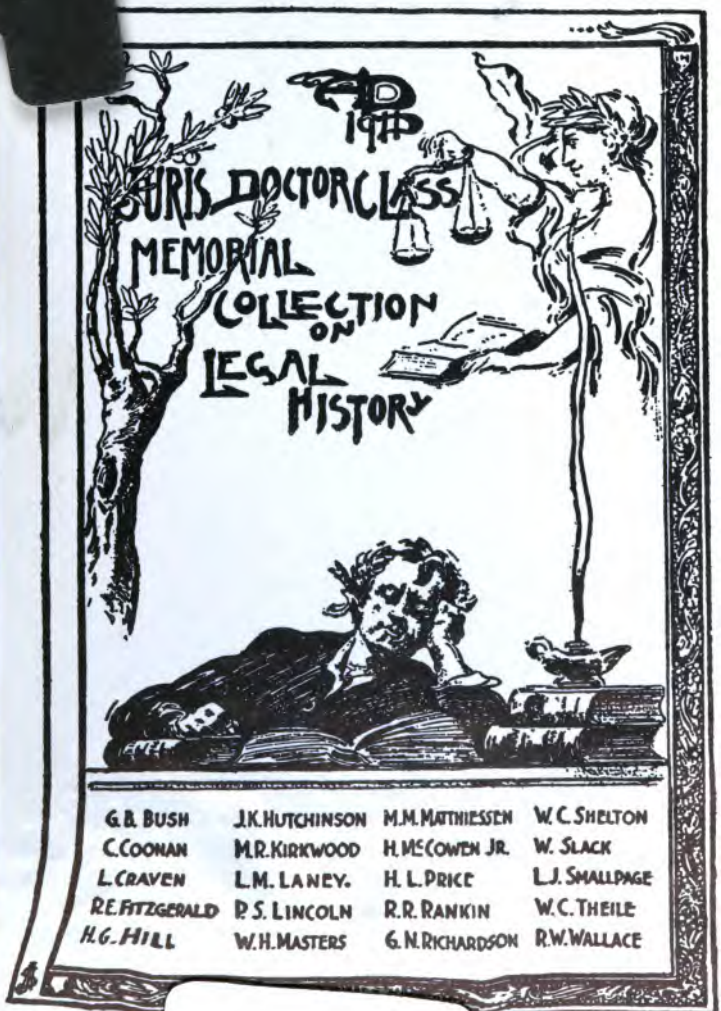
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October 19..

# ODDITIES OF THE LAW

BY

FRANKLIN FISKE HEARD

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"SEVERAL hints which may be serviceable unto you, and not ungrateful unto others, I present you in this Book: they are not trite or vulgar. I set them not down in order, but as memory, fancy, or occasional observation produced them; whereof you may take the pains to single out such as shall conduce unto your purpose."

SIR THOMAS BROWNE.

SUNT bona, sunt quædam mediocria, sunt mala plura
Quæ legis hic: aliter non fit, Avite, liber.

MARTIAL.

# ODDITIES OF THE LAW.

IN the year 1598 Sir Edward Coke, then Attorney General, married the Lady Hatton, according to the Book of Common Prayer, but without banns or license, and in a private house. Several great men were there present, as Lord Burleigh, Lord Chancellor Egerton, etc. They all, by their proctor, submitted to the censure of the archbishop, who granted them an absolution from the excommunication which they had incurred. The act of absolution set forth that it was granted by reason of penitence, *and the act seeming to have been done through ignorance of the law.*[1]

ACCORDING to Clayton, p. 158, the design of a bill of exceptions "is to prevent the precipitancy of the judge."

[1] Middleton v. Croft, Cunningham, 103, 3d ed.

GODBOLT, p. 34, reports a case in which Chief Justice Belknap lays down a certain proposition which "he swore to be law."

IN Mosby v. Leeds, 3 Call, 439, "Leeds filed a bill in chancery, stating that Clark, being indebted to him, absconded, and the plaintiff took out an attachment against his effects, which was levied by Mosby, the sergeant of the city of Richmond, on a female slave and some other articles; that Marshall or Anderson, having a claim against Clark for house-rent, directed the sergeant on the succeeding day to distrain, who appears to have levied it on the balance of the negro which should remain after satisfying the plaintiff."

MR. JUSTICE MAULE once said that nominal damages "are in effect only *a peg to hang costs on.*" [1]

"IN order to obtain an equitable verdict in an action of adultery," writes Voltaire, "the jury should be composed of twelve men and twelve women, with an hermaphrodite to give the casting-vote in the event of necessity."

[1] Beaumont v. Greathead, 2 D. & L. 635, 636.

IN the Third Institute, cap. I., is this maxim, Injuria illata judici seu locum tenenti regis videtur ipsi regi illata, maximè si fiat, in exercente officium.

Shakespeare, in the following passage from the Second Part of Henry IV. refers to this maxim, or to the law which it describes: —

CHIEF JUSTICE. I then did use the person of your father;
The image of his power lay then in me:
And, in the administration of his law
Whiles I was busy for the commonwealth,
Your Highness pleased to forget my place,
The majesty and power of law and justice,
The image of the king whom I presented,
And struck me in my very seat of judgment
Whereon, as an offender to your father,
I gave bold way to my authority,
And did commit you.

ACT V. SC. 2.

In a very recent case in the House of Lords, Lord Selborne, in the course of the argument as to notice, referred to the case of Chief Justice Gascoigne, who without a moment's hesitation, and without any prior notification, sent the Prince of Wales instantly to the Fleet Prison for a contempt of court committed in præsentiâ; the heir of the crown submitting patiently to the sentence, and making reparation for his error by acknowledging it.[1]

[1] Walt v. Ligertwood, L. R. 2 H. L., Scotch Appeals, 367 note, A. D. 1874.

FOR their private reading our readers are referred to the case of Smith v. Tebbitt, L. R. 1 P. & D. at pp. 405, 406.

IN Price v. Sears, 2 Lowell, 553, a claim of salvage for a boat on which the plaintiff escaped from a ship lost in mid-ocean is rather dryly disposed of: "As the boat appears to have saved him quite as much as he the boat, that account is in equilibrio."

"THE case in Salkeld does not come very strongly recommended. For first, it is an anonymous case; and next, what is relied upon as there said was beside the point in judgment."[1]

SIR HARBOTTLE GRIMSTON wrote in true professional language of his father-in-law, Sir George Croke, that he was continued one of the judges of the King's Bench "till a certiorari came from the great Judge of heaven and earth to remove him from a human bench of law to a heavenly throne of glory."[2]

[1] Per Lord Kenyon, C. J., in Taylor v. Eastwood, 1 East, 216.

[2] Cro. Eliz., Epistle Dedicatory.

"YOU have made a long entry to a little house," said Lord Keeper Egerton to Mr. Higgins, who used a long preface to a cause of little worth, and might have been sooner answered.[1]

IN a recent volume of "Reports of Cases Argued and Determined in the Court of Appeals of the State of New York," is this marginal note, and this only: "Judgment affirmed of course."[2]

IN an action for scandalous words spoken of a justice of the peace, the Court observed: "There is not much difficulty in this case; but there is no end of citing and answering cases. The plaintiff here is said to be a justice, yet no special damage laid in the case: the office of justice of the peace is not so considerable but that many people choose to decline it."[3]

IT is said in March on Arbitraments, 215, that a non-suit "is but like the blowing-out of a candle, which a man, at his own pleasure, lights again."[4]

[1] Notes and Queries, 4th ser. vol. VII. p. 5.
[2] Lyman v. Wilber, 3 Keyes, 427.
[3] Palmer v. Edwards, Cooke, 242, 3d ed.
[4] Quoted by Metcalf, J., in Clapp v. Thomas, 5 Allen, 159.

IN a recent case Chief Justice Chapman observed that "Experience is not sufficiently uniform to raise a presumption that one who has the means of paying a debt will actually pay it." [1]

MR. JUSTICE WAYNE, having occasion to refer to the second volume of Gray, cited it as follows: "the 2d of Horace Gray's Reports of the Supreme Judicial Federal Court of Massachusetts." [2]

"THE parents of trusts were *fraud and fear*, and a court of conscience was the *nurse*." [3]

SAUNDERS thus concludes the report of the case of Windsor v. Gover, 2 Saund. 305 *c*: "For this fault alone judgment was given against the defendant by Twisden, Raynsford, and Morton, Justices, Kelynge, Chief Justice, being absent, who said that the plea in this point was altogether insensible. But I believe their principal reason was *because they would not determine the matter of law*."

[1] Atwood v. Scott, 99 Mass. 178.

[2] Dynes v. Hoover, 20 How. 81.

[3] Attorney General v. Sands, Hard. 491, quoted in 1 Perry on Trusts, § 3 note.

SIR FRANCIS PALGRAVE relates this anecdote: Within memory, at the trial of a cause at Merioneth, when the jury were asked to give their verdict, the foreman answered, "My lord, we do not know who is plaintiff, or who is defendant; but we find for whoever is Mr. C. D.'s man." Mr. C. D. had been the successful candidate at a recent election, and the jury belonged to his color.[1]

LORD ELDON mentions a remarkable instance as regarded himself, of the uncertainty of evidence as to handwriting. A deed was produced at a trial, on which much doubt was thrown as a discreditable transaction. The solicitor was a very respectable man, and was confident in the character of his attesting witnesses. One of them purported to be by Lord Eldon himself; and the solicitor, who had referred to his signature to pleadings, had no doubt of its authenticity, yet Lord Eldon had never attested a deed in his life.[2]

LORD COKE says that Moses was the first reporter of law.[3]

[1] Authority of the King's Council, p. 143.

[2] Eagleton v. Kingston, 8 Ves. 473. Quoted by Mr. Justice Coleridge in his judgment in Doe v. Suckermore, 5 A. & E. 716, and 2 N & P. 34.

[3] 6 Rep. Pref. p. xv.

JUDGMENT was given against the defendant of about forty years of age, upon which judgment he brought a writ of error, and assigned infancy, and, appearing by attorney for error, the Court fined the attorney.[1]

IN the Preface to the Eighth Part of his Reports Lord Coke says: "There are certain other cases now published by me, concerning some of the most abstruse, dark, and difficult points in the law, and yet very necessary to be known. And I have of purpose done these as plainly and clearly, and therewith as briefly, as I could. For the laws are not like to those things of nature which shine much brighter through crystal or amber than if they be beheld naked; nor like to pictures, that ever delight most when they are garnished and adorned with fresh and lively colors, and are much set out and graced by artificial shadows."

THE following is one of the head-notes to the case of Abbe v. Rood, 6 McLean, 107: "A witness who swears that a certain thing was said or done is entitled to greater weight than a witness who said that he did not hear the remark, or witness the act."

[1] Per Holt, C. J., in Pierce v. Blake, 2 Salk. 515, 516.

THE Public Local Laws of Maryland, vol. 2, p. 315, contains the Police Act of the City of Baltimore, passed in 1860. This provides that "No *Black Republican*, or indorser or approver of the Helper Book," shall be appointed to any office under the Board of Police. The constitutionality of this act came before the court in Baltimore v. State, 15 Md. 376, 468. The above clause was objected to as unconstitutional; but the Court held that they could not take judicial cognizance of the meaning of these words.

"IT is wonderful how slowly the most obvious truths are perceived and admitted. The plain and simple morality of the gospel required a revelation. Even in my day at the bar it was the constant practice of the Orphans' Courts to allow a charge, in administration accounts, for the price of strong drink furnished avowedly to stimulate the bidders at the sale of the decedent's effects." [1]

ON the titlepage of Clayton's Reports is this motto: "Open thy mouth for the dumb. . . . Plead the cause of the poor and needy." — PROV. xxxi. 8, 9.

[1] Per Gibson, C. J., in Pennock's Appeal, 14 Penn State, 450, A.D. 1850.

IF the husband will not supply his wife with necessaries, she must make her complaint to the ordinary, and he may supply a remedy; and that this is the proper course, and best adapted to such a complaint, is manifest. Because the bishop himself ought to examine the matter in private; and, if he finds all persuasion to a reconciliation useless, he must proceed to sentence, and this will be according to the demerit of the wife, and not according to the estate and degree of her husband, as a jury must proceed, which would be a pernicious precedent, since bad women would have as great provision as good women, when the default is on the part of the husband. But, in the spiritual court, such bad women as have violated their vows shall have such provision as clerks convict (Stamf. 140), *and shall be fed with the bread of affliction and the water of adversity.*[1]

WHEN sitting in the Rolls Court, indignant at the conduct of one of the parties, Lord Kenyon astonished his staid and prosaical audience by exclaiming, "This is the last hair in the tail of procrastination!" Whether he plucked it out or not, observes Mr. Townsend, the reporter has omitted to inform us.[2]

[1] Manby v. Scott, 2 Smith L. C. 457, 458, 7th London ed.
[2] Lives of Eminent Judges, vol. 1, p. 79.

A STATUTE of New York provides, that if an officer in a corporation refused, on request of a stockholder, "to exhibit the books, or to submit them to an examination," he should forfeit a certain sum. The defendant contended that the stockholder could not take off a list of stockholders. "It was supposed," said the Court, "that the etymological meaning of the words 'exhibit' and 'examine' limited their meaning to the construction contended for by the defendant. If the derivation be from *examen*, a swarm of bees, it may be supposed to imply the industry and perseverance of the *bee*, and would then authorize a search as thorough as the most earnest could desire; and not only a search, but that the best part of that which is searched should be also carried off to be converted to a good and useful purpose." [1]

IT was argued in a case in the House of Lords, that the word "but" is not necessarily in opposition to what precedes it. It is a conjunction as well as a preposition. In one case it is derived from "be out," and is equivalent to "except," or "without." Per Lord Brougham: "As in the motto of the Macphersons, 'Touch not a cat but [without] a glove.'" [2]

[1] Brouwer v. Cotheal, 10 Barb. 216.

[2] Abbott v. Middleton, 7 House of Lords Cases, 75, 76.

LORD CAMPBELL relates, that upon Bunyan's wife seeking redress from the Judges of Assize, who were the *furious* Twisden and Hale, the former, according to Bunyan's own account, "snapt her up." But Hale said, "Alas, poor woman!" and added, "There is no course for you but to apply to the king for a pardon, or to sue out a *writ of error;* and, the indictment or subsequent proceedings being shown to be contrary to law, the sentence shall be reversed, and your husband shall be set at liberty,"—a piece of information little calculated to have extricated the *tinker* Bunyan from the "Slough of Despond."[1]

THE late Lord Justice James remarked, in a very recent case in the Court of Appeal, that the Court could not be too strict in taking care that the pleadings should not degenerate into the oppressive character of some of the pleadings in the old Court of Chancery. "We must not," added his lordship, "be driven to confess, as Oliver Cromwell did with a sigh, in reference to his ineffectual attempt to reform the law and procedure of this country, that the sons of Zeruiah are too hard for us. For my own part, I do not mean to succumb to their devices."[2]

[1] Lives of the Chief Justices, II. 212 and note, 3d ed.
[2] Davy v. Garrett, 38 L. T. N. S. 81, A.D. 1878.

IN Brocket v. Ohio Railroad Company, 14 Penn. State, 244, 245, where the question was whether a railroad, under an authority to take land, could move a house, Gibson, C. J., said: "It is indispensable to safety and speed that the route of the railroad be as direct as the surface of the country will permit, but they could not be attained in a settled country if every hovel or house were privileged; and thus a quasi national work intended for posterity might be botched through a respect for the sacredness of temporary erections. The course of a railroad might be insuperably obstructed by the obstinacy of a proprietor in the gorge of a mountain, or the pass be made, at least, difficult and dangerous. A mangled passenger inquiring the reason of a deflection, when the cause of it had disappeared, might be told of our infinite respect for property at the expense of safety; but the information would neither ease his pain, nor set his leg."

"THE report of the case of Swift v. Stevens, 8 Conn. 439, concludes as follows: "Peters, J., having received, during the argument of this case, intelligence of the death of his son, Hugh Peters, Esq., of Cincinnati, left the court-house, — multa gemens, casuque animum concurrus, — and gave no opinion."

THE following is one of the head-notes to the case of Barrow v. Richard, 8 Paige, 351: "A very highly *colored* description of the noxious effects of coal-dust, in a sworn bill in chancery, although somewhat poetical, cannot be treated by the Court as a mere poetic fiction; but upon demurrer to the bill, such coal-dust will be considered as a real nuisance."

THE CHANCELLOR. "The allegation in the bill on this subject, though it is a little poetical, cannot be considered a mere poetic fiction, as it is sworn to by the complainant, and is admitted by the demurrer. He there states that large quantities of volatile and offensive dust and smut from the coal rise in the air, and are diffused by the wind into the premises of the neighboring inhabitants. And in spite of all their care, such coal dust and smut not only settles upon their walks and their grass plats, but also on their fragrant plants and flowers, 'beclouding the brightness and beauty which a beneficent Creator has given to make them pleasant to the eye, and cheering to the heart of man.' But what must be still more offensive to the ladies of the neighborhood, 'this filthy coal-dust settles upon their doorsteps, thresholds, and windows, and enters into their dwellings, and into their carpets, their cups, their kneading-troughs, their beds, their bosoms, and their lungs; discoloring their linen and their otherwise stain-

less raiment and robes of beauty and comfort, defacing their furniture, and blackening, besmearing, and injuring every object of utility, of beauty, and of taste.' Making all due allowance for the *coloring* which the pleader has given to this naturally *dark* picture, it is perfectly certain that this keeping of a coal-yard upon any of these lots is a business offensive to the neighboring inhabitants, according to the spirit and intent of these restrictive covenants."

IN the course of the argument in the case of The Betsey,[1] Marshall, C. J., observed, "No attempt has been made to distinguish this case from those of The Vengeance [2] and The Sally.[3] Those cases have settled the law; and, unless this case can be distinguished from those, the Court does not think an argument necessary." C. Lee for the claimant: "I hope to show that this case is distinguishable from those, and to be permitted to argue at large the point of law, that this is not a case of admiralty jurisdiction. I argued the case of The Vengeance, and I know it was not so fully argued as it might have been; and some of the judges may recollect that it was a rather sudden decision." Mr. Justice Chase answered, "I recollect that the argument was no great thing; but the *Court* took time, and *considered the case well.*"

[1] 4 Cranch, 446. [2] 3 Dallas, 297. [3] 2 Cranch, 406.

"UPON the question of cruel treatment," said the Court in a case in Indiana, which was a petition for a divorce, "we think the evidence was sufficient to justify the finding. Among other facts one witness swore that he 'saw the wife come out of the back door of the husband's house, and his foot was after her.' The Court may have inferred from this that she was forcibly expelled from the house."[1]

A NEGOTIABLE note given for a gaming consideration is void in the hands of even an innocent holder for value. Unger v. Boas, 13 Penn. State, 601. "The argument here is," said the Court, by Mr. Justice Burnside, "that commerce is to be encouraged, and therefore we ought to decide in favor of an innocent indorsee. I am well satisfied that we shall not send a vessel less to sea by taking from commerce the uncertain aid of faro-banks and other gaming-tables."

IN New York it has been determined that the fact that inspectors of elections, and the clerks, are sworn upon Watts's Psalms and Hymns, and not upon the Gospels, will not invalidate the election.[1]

[1] Sullivan v. Sullivan, 34 Indiana, 371.
[1] People v. Cook, 14 Barb. 259, 299.

IN Touchard v. Crow, 20 Cal. 150, 163, which was a jury-waived case, the Court charged itself as a jury on questions of fact. On appeal, Field, C. J., thus disposes of this part of the case: "This action was tried by the Court without the intervention of a jury. Of course, in such cases, the Court not only performs its peculiar and appropriate duty of deciding the law, but also discharges the functions of a jury, and passes upon the facts. The counsel of the appellants impressed, as it would seem, with this dual character, requested the Court to charge itself as a jury, and handed in certain instructions for that purpose. The Court, thereupon, formally charged that part of itself which was thus supposed to be separated, and converted into a jury, commencing the charge with the usual address, 'Gentlemen of the jury,' and instructing that imaginary body, that, if they found certain facts, they should find for the plaintiff, and otherwise for the defendants, and that they were not concluded by the statements of the Court, but were at liberty to judge of the facts for themselves. The record does not inform us whether the jury thus addressed differed in their conclusions from those of the Court. These proceedings have about them so ludicrous an air, that we could not believe they were seriously taken, but for the gravity with which counsel on the argument referred to them."

MR. COMMISSIONER FANE, in his examination before a committee of the House of Lords, calls the citing of an unreported case pocket pistol law.[1]

"THE next cast of a fisherman's net" has long been used as an illustration of a mere expectancy, not the subject of grant. In a late case in Massachusetts it was sought to substantiate such a sale, and the Court were obliged to adjudge that a man has no salable interest in halibut in the sea. There is a possibility, they say, the man may catch halibut; but he has no actual or potential interest in the fish until he has caught them.[2]

MR. JUSTICE VENTRIS states that a man "cannot have an estate put into him in spite of his teeth."[3]

"OFTEN an entire failure of consideration in the receipt of what is mere moonshine is sufficient to rescind a contract."[4]

[1] 1 Lindley on Partnership, 42.

[2] Low v. Pew, 108 Mass. 347. The other maxim (not of the law) is applicable: "First catch your fish," etc. Cited in 1 Jones on Mortgages, § 136.

[3] Thomson v. Leach, 2 Vent. 206, quoted by Abbott, C. J., in Townson v. Tickell, 3 B. & A. 35.

[4] Per Woodbury, J., in Warner v. Daniels, 1 W. & M. 110.

LORD ELDON once observed, "It is with great regret, if that expression may properly come from a judicial mouth, that I am compelled to say that this action cannot be maintained."[1]

THE law, it is true, aids the vigilant, and not the slothful. It is possible, nevertheless, even in such a case, to rise too early.[2]

IN Perkins on Conveyancing, § 300, is this passage: "Now are we to speak of dower. And as unto that know, that, as Mr. Littleton hath well showed and set forth in his first book, there are five manner of dowers, which appear in this chapter of Dowers; and many and diverse good cases concerning dower are there put by my Lord Littleton. And also there are so many good and necessary cases concerning dower put upon the writs of dower, in 'Natura Brevium,' with the additions, that a man can hardly speak any thing more concerning dower beyond what is showed and said in the same book. *And yet, notwithstanding that, something shall, by the grace of God, be said here concerning dower.*"

[1] Campbell v. Stein, 6 Dow, 135, 136.

[2] Per Roosevelt, J., in Livingston v. Bank of New York, 26 Barb. 309.

IN a very recent case in Tennessee it was decided that a husband and father who has a policy of insurance on his life, payable to him, his executors, administrators, and assigns, may dispose of it by will.[1] In the judgment, Chancellor Cooper gives a humorous version of the case of Hales v. Petit, 1 Plowd. 253: —

"The very point made by the learned counsel was elaborately argued and considered three centuries ago in one of the celebrated causes of that day, — a cause rendered still more memorable by the fact that it is supposed to have been the occasion of one of the colloquies of the Shaksperian drama. Plowden's Reports were popular when first published, having been four times reprinted during the last quarter of the sixteenth century. They have been commended by our ablest American commentator for their authenticity and accuracy, and as 'exceedingly interesting and instructive by the evidence they afford of the extensive learning, sound doctrine, and logical skill of the ancient English bar.'[2] Better authority, therefore, we could not find.

"In Hales v. Petit, 1 Plowd. 253, Sir James Hales, one of the Justices of the Common Pleas, a son of an eminent Baron of the Exchequer, was

[1] Williams v. Corson, 2 Tenn. Chanc. 269, A.D. 1875.

[2] "Exquisite and elaborate Commentaries," says Lord Coke. Pref. to 3 Rep. viii.

found by a coroner's jury to have wilfully gone into a river, 'and himself therein feloniously and voluntarily drowned.' Such an act was, in those days, if not 'rank burglary,' at least felony without benefit of clergy, and not only deprived the guilty party of Christian burial, but occasioned a forfeiture of his goods and chattels to the Crown. The suit was between an assignee claiming under the Crown, and the widow of the deceased, and raised the question whether a joint lease to Justice Hales and wife was forfeited to the Crown, or survived to the widow. The argument turned upon the nice point whether the felony of the husband was consummate in his lifetime, or only after his death.

"Two able sergeants sought, on behalf of the widow, to satisfy the Court that the felony was consummated after the death of the distinguished judge. The following is a specimen of the 'sound doctrine and logical skill' of these members of the ancient English bar. They insisted that the 'forfeiture shall only have relation to the time of the death, and the death precedes the forfeiture, for until the death is fully consummate he is not a felo de se; for if he had killed another, he should not have been a felon until the other had been dead. And for the same reason he cannot be a felo de se until the death of himself be fully had and consummate. For the death precedes the felony both

in the one case and in the other, and the death precedes the forfeiture. But, nevertheless, the forfeiture comes at the same instant that he dies. Yet in things of an instant there is priority of time in consideration of law, and the one shall be said to precede the other, although both shall be said to happen at one instant; for every instant contains the end of one time and the commencement of the other. And, accordingly, here the death and the forfeiture shall come together and at one same time, yet there is a priority; that is, the end of the life makes the commencement of the forfeiture, though, at the same time, the forfeiture is so near to the death, that there is no meantime between them, yet, notwithstanding that, in consideration of law, the one precedes the other, but by no means has the forfeiture relation to any time in his life.'

"It required four learned sergeants, on behalf of the assignee of the Crown, to meet this lucid argument. They insisted that the forfeiture should have relation to the act done in the lifetime which was the cause of the death. And one of them said, 'The act consists of three parts. The first is the imagination, which is a reflection or meditation of the mind, whether or no it is convenient for him to destroy himself, and what way it can be done. The second is the resolution, which is a determination of the mind to destroy himself, and to do it in this

or that particular way. The third is the perfection, which is the execution of what the mind has resolved to do. And this perfection consists of two parts, viz., the beginning and the end. The beginning is the doing of the act which causes the death, and the end is the death, which is only a sequel to the act.' And much more to the same purport.

"The reasoning of the Court is in the same learned and discriminating vein. For the Lord Dyer said: 'That five things are to be considered in this case. First, the quality of the offence; secondly, to whom the offence is committed; thirdly, what shall be forfeit; fourthly, from what time the forfeiture shall commence; and fifthly, if the term here shall be taken from the wife.' And Sir Anthony Brown, J., said: 'Sir James Hales was dead; and how came he to his death? It may be answered, By drowning. And who drowned him? Sir James Hales. And when did he drown him? In his lifetime. So that Sir James Hales, being alive, caused Sir James Hales to die, and the act of the living man was the death of the dead man.'

"The decision was in favor of the assignee of the Crown, and upon the ground that the act of the living man was the effective cause of the felony, although the latter was only consummate upon the death. It is an authority directly in point on the question before us, and binding as a precedent,

whatever may be said of the peculiar form in which its logic is presented.

"The Elizabethan drama is full of legal allusions, showing that the business of the courts was brought home to the people in those days, even more than in our era. What wonder, then, that the great dramatist, in his marvellous range of vision, should see this specimen of legal acumen, and serve it up for the amusement of the groundlings, and as a foil to the tragic end of the gentle Ophelia!

"In Sir James Hales's case the coroner sat on him, and found it felony. In Ophelia's case the 'crowner' sat on her, and found it Christian burial. In the first case the learned counsel says that the act consists of three parts,—the imagination, the resolution, and the perfection. 'If I drown myself wittingly,' says the clown, 'it argues an act; and an act hath three branches: it is to act, to do, and to perform.' The learned Court discusses its case upon the supposition that the man went to the water. The clown concedes that, 'if the man go to the water, and drown himself, it is, will he, nill he, he goes. But,' he adds, 'if the water come to him, he drowns not himself: argal, he that is not guilty of his own death shortens not his own life.' 'But is this law?' queries his fellow clown. 'Ay, marry is't; Crowner's Quest Law."

IN a case[1] where the decree was made thirty-eight years after the commission of the waste, Shadwell, Vice Chancellor of England, thus describes the principle upon which a wrongdoer is not protected by time: "That the author of a mischief is not to complain of the result of it . . . is a proposition supported by the Holy Scriptures and by the decisions of our own courts of equity;" and he further quotes St. Matthew's Gospel, xxvi. 52, and Ovid.[2]

THROUGHOUT the report of the case of Conustable v. Clowbury, Noy, 75, the word "ship" should be substituted for "wife." In the notes originally taken by Noy, the word would probably be "nief," which might be rendered either "ship," or the "*wife* of a villein."[3]

THE reader is referred to the charge to the jury in the case of State v. Brown, 67 N. C. 442, in which a negro was charged with having committed rape on the body of a white woman. It is too long for quotation.

[1] Leeds v. Amherst, 2 Phillips, 117; 20 Beav. 239; 14 Sim. 357, cited in Banning on Limitations, 99.

[2] Neque enim lex æquior ulla est,
Quam necis artifices arte perire sua. — *Ars Amat.* I. v. 655.

[3] 2 M. & G. 18 note.

THE following eulogy on the common law is taken from the opinion in the case of Snowden v. Warder, 3 Rawle, 103, 104:—

"The common law is truly entitled to our highest veneration; and although it has been said by some to have been instituted by Brutus, the grandson of Æneas, and the first King of England, who died when Samuel was judge of Israel, and who wrote a book in the Greek tongue, which he called 'The Laws of the Britons,' and which he had collected from the laws of the Trojans, it is nevertheless not entitled to our veneration on account of its antiquity; for nearly all that is valuable in it is comparatively of modern date.[1] Neither is it entitled to our respect on account of the ancient, absurd, and superstitious modes of trial, none of which have the slightest resemblance to our present trial by jury. Still less does it deserve our admiration on account of the feudal system, which imposed a restraint upon every effort to improve the jurisprudence of the country, and which prevented the adoption of those maxims of justice and equity which now render it the admiration of the enlightened jurist, and the favorite of the people. It is, however, entitled to our veneration, because it has, within the last two centuries, been moulded by the wisdom of the ablest statesmen, and a succession of learned and

[1] See Preface to 3d Rep.

liberal-minded judges, into a flexible system, expanding and contracting its provisions, so as to correspond to the changes that are continually taking place in society by the progress of luxury and refinement. As the youthful skin of a vigorous child expands with its growth, and accommodates itself to every development which the body, in its progress to maturity, makes of its powers, capacities, and energies, so does the common law, in order to suit the exigencies of society, possess the power of altering, amending, and regenerating itself. It has been truly and eloquently said, that 'it is the law of a free people, and has freedom for its end; and under it we live both free and happy. When we go forth, it walks silently and unobtruiselvy by our side, covering us with its invisible shield from violence and wrong. Beneath our own roof, or by our own fireside, it makes our home our castle. All ages, sexes, and conditions share in its protecting influence. It shadows with its wings the infant's cradle, and with its arm upholds the tottering steps of age.' It is the duty of the judiciary not only to guard it with vigilance against incongruous innovations, but also to extend the operation of its principles, so as to embrace all the new and various interests which arise among an active and enterprising people. Thus much for the common law."

THE language of the Court on the trial of questions of legitimacy, as reported in the Year Books, was sometimes more emphatic than decorous. Judge Richell improved upon the maxim of civil law in favor of legitimacy by making it of still more general application. He says, "For who that bulleth my cow, the calf is mine." [1] Perhaps Shakespeare intended to immortalize Judge Richell and his learned brethren, by making them the prompters of King John, in the following address to Robert Falconbridge: —

KING JOHN. Sirrah, your brother is legitimate;
Your father's wife did after wedlock bear him:
And, if she did play false, the fault was hers;
Which fault lies on the hazards of all husbands
That marry wives. Tell me, how if my brother,
Who, as you say, took pains to get this son,
Had of your father claim'd this son for his?
In sooth, *good friend, your father might have kept*
*This calf, bred from his cow, from all the world;*
In sooth, he might: then, if he were my brother's,
My brother might not claim him; nor your father,
Being none of his, refuse him. This concludes, —
My mother's son did get your father's heir;
Your father's heir must have your father's land.

ACT i. SC. 1.

"THAT excellent code which has grown gray by *the awful hoar of innumerable ages.*" [2]

[1] Year Book, 7 Hen. IV. 9, 13. Barony of Gardner, lv. note.
[2] Hall Admiralty, 91.

TO the case of Moore v. Moore, 2 Atk. 273, which arose upon some differences and disputes between husband and wife, the reporter appended the famous "Nota Bene: 'Mr. Attorney General,[1] after the decree was pronounced, said, this was so uncommon a case that probably it would never happen again. The Lord Chancellor[2] replied, If you think so, you must have a very good opinion of the ladies; for

> In amore hæc omnia insunt vitia: injuriæ,
> Suspiciones, inimicitiæ, induciæ,
> Bellum, pax rursum.'"[3]

"WE do not impeach the omnipotence of the Legislature for creating attorneys, as the world was created, out of nothing; or the power to control such eccentric orbs within their appropriate spheres. Our province is rather to ascertain their orbits, and to harmonize their motions, if possible, with the movements of other bodies."[4]

DECLARATION in Murphy v. Staton, 3 Munf. 239, "for negligently *ducking*" certain goods.

[1] Sir Dudley Ryder.
[2] Lord Hardwicke.
[3] Terence, Eunuchus, Act i. sc. 1, near the commencement.
[4] Per Cutting, J., in Simmons v. Jacobs, 52 Maine, 156.

IN a recent case in Indiana, the Chief Justice thus discourses:[1] "Immediately after the fall of Adam there seems to have sprung up in his mind an idea that there was such a thing as decency and such a thing as indecency; that there was a distinction between them; and since that time the ideas of decency and indecency have been instinctive in, and indeed parts of, humanity. And it historically appears that the first most palpable piece of indecency in a human being was the public exposure of his or her, as now commonly called, privates; and the first exercise of mechanical ingenuity was in the manufacture of fig-leaf aprons by Adam and Eve, by which to conceal from the public gaze of each other their now, but not then, called privates. This example of covering their privates has been imitated by all mankind since that time, except, perhaps, by some of the lowest grades of savages. Modesty has ever existed as one of the most estimable and admirable of human virtues."

HASTELOW v. JACKSON, 8 B. & C. 221. "I accede to the authority of that case, although I think it a very strong decision. It does not convince me: *it overcomes me.*" Per Alderson, B. in Mearing v. Hellings, 14 M. & W. 711, 712.

[1] Ardery v. State, 56 Ind. 328, 329, A.D. 1877.

THE late Lord Justice James observed in a recent case, "It appears to me that the proper place for such an argument as this would be in some satirical work ridiculing, by clever exaggeration the doctrines of the Court of Equity with respect to constructive notice. It is not, to my mind, a substantial argument, capable of being addressed with any effect to any court whatever," [1]

SIR James Stephen says, "The criminal law stands to the passion of revenge in much the same relation as marriage to the sexual appetite." [2]

"RICH v. BASTERFIELD, 4 C. B. 783, is the only case at all in your favor, and I think that is *a desperate refinement.*" Per Blackburn, J., in Harris v. James, 45 L. J. Q. B. 546; 35 L. T. 241.

"AN accident is something which may be present or absent, without detriment to the subject." [3]

[1] Hunter v. Walters, 7 Ch. App. 86.

[2] General View of the Criminal Law of England, p. 99.

[3] Cited by Chief Justice Metingham, through a Latin translation, from Porphyrius, Year Book, 21 & 22 Edward I. 72.

NON temere credere est nervus sapientiæ. Not to believe rashly is the nerve of wisdom.[1]

IF a pauper be nonsuited, the usual practice is to tax the costs, and for non-payment to order him to be whipped.[2] Salkeld reports: "I moved that a pauper might be whipped for non-payment of costs upon a nonsuit, and the motion was denied by Holt, C. J., saying he 'had no officer for that purpose, and never knew it done.'"[3]

"ALBEIT he that hath accomplished the age of fourteen years at the time of the marriage be not then able to pay the debt which he oweth to his wife, yet by the received opinion (though some dissent), the matrimony is not therefore by and by to be adjudged void; but she is to expect until he have overreached the eighteenth year of his age, wherein plena pubertas is concluded; and if then, also, he be unable to pay his dues, at the instance of the woman the marriage may be dissolved, unless the judge, upon the consideration of the qualities of the persons, shall grant a longer time."[4]

[1] Wade's Case, 5 Rep. 114 b.
[2] Bac. Ab. Pauper D.
[3] 2 Salk. 506.
[4] Swinbourne on Spousals, 49.

THE chronicler relates that Alan de Neville, chief forester of Henry the Second, pleased the king during his (Alan's) lifetime, but that upon his death, when the brethren of a certain monastery sought a portion of his substance for their house, the king showed his regard for his late forester by replying, "I shall have his wealth; but you may have his carcass, and the devil may have his soul." [1]

A CURIOUS instance of the plea molliter manus imposuit occurs in a case reported in Levinz.[2] The plea to an action for assault and battery was that the female defendant, being the wife of an esquire and justice of the peace, the female plaintiff being the wife of a doctor in divinity, assumed to go before her at a funeral at Plymouth, whereupon the defendant gently laid her hands upon to displace her, as she lawfully might. The Court, without deciding the question of precedence, gave judgment for the plaintiff.

SIMON filius Petri, Baron of the Exchequer, anno XI. Hen. II.[3]

[1] Bigelow, History of Procedure in England, 146, note.
[2] Ashton v. Jennings, 2 Lev. 123.
[3] 2 Madox Hist. Exch. 313.

IT was decided, in the Duchess of Kingston's case, that a judgment which had been obtained by fraud would not stand in the way of a prosecution of the duchess for bigamy; that the suit in the Ecclesiastical Court was a contrivance merely, a link in the chain of fraud, and in truth no judgment. According to the phrase used by Lord Loughborough, Fabula, non judicium, hoc est; in scenâ, non in foro, res agitur.[1]

"STANDS in his shoes." "An expressive phrase."[2]

HENRY HUNT, the famous demagogue, having been brought up to receive sentence upon a conviction for holding a seditious meeting, began his address in mitigation of punishment by complaining of certain persons who had accused him of "stirring up the people by *dangerous eloquence*." Lord Ellenborough, C. J. (in a very mild tone): "My impartiality as a judge calls upon me to say, sir, that, in accusing you of that, they do you great injustice."[3]

[1] Lord Cranworth, in Shedden v. Patrick, 1 Macqueen, 608, citing Wedderburn, S. G., in The Duchess of Kingston's Case, 20 Howell State Trials, 479.

[2] Per Hosmer, C. J., in Enos v. Tuttle, 3 Conn. 250.

[3] Lord Campbell, Lives of the Chief Justices, IV. 300, 3d ed.

IN Massachusetts, in a very recent case, the Court say: "The question, which has been so ably and exhaustively argued by the counsel on each side, is one which cannot properly arise in this case."[1]

BOLINGBROKE, after his partial pardon and return to England, being suspected of harboring a person accused of a state crime, his house, and even his bed-chamber, as he was lying in his bed, were searched by the ministers of justice. Traitorous bed-fellow with him he had none; a bed-fellow, however, he had, a female, whose reputation would have been ruined by the disclosure. Confusion more or less he could not but have betrayed. Had the search ended there, this confusion would naturally and properly have been regarded as circumstantial evidence of the crime he was suspected of. His presence of mind saved him from that mischance. Uncovering enough of her person to indicate the sex without betraying the individual, he preserved himself as well from the imputation of the crime of which he was not guilty as from the collateral misfortune which that imputation was so near bringing on his head.[2]

[1] Attleborough National Bank v. Rogers, 125 Mass. 343.
[2] 3 Bentham Ev. 151 note.

IN regard to professional communications, the reason of public policy which excludes them applies solely to those between a client and his legal adviser; and the rule is clear and well settled that the confidential counsellor, solicitor, or attorney of the party, cannot be compelled to disclose papers delivered, or communications made to him, or letters or entries made by him, in that capacity.[1]

The rigid enforcement of this rule no doubt operates occasionally to the exclusion of truth; but if any one feels inclined to condemn the rule on this ground, he will do well to reflect on the eloquent language of the late Lord Justice Knight Bruce, who, while discussing this subject on one occasion, felicitously observed, "Truth, like all other good things, may be loved unwisely — may be pursued too keenly — may cost too much. And surely the meanness and the mischief of prying into a man's confidential consultations with his legal adviser, the general evil of infusing reserve and dissimulation, uneasiness, suspicion, and fear, into those communications which must take place, and which, unless in a condition of perfect security, must take place uselessly or worse, are too great a price to pay for truth itself."[2]

[1] 1 Greenl. Ev. § 237.

[2] Pearse v. Pearse, 1 De Gex & Smale, 28, 29

IT was finely remarked by Roger North, that "Generally, in the law as well as in all other human literature, antiquity is the foundation; for he that knows the elder can distinguish what is new, but he that deals only in the new cannot tell how fresh or stale his opinions are, nor from whence they are derived."[1] But it is of equal importance, that, knowing the new, he should be able to distinguish the elder. It is, indeed, the advice of Lord Coke, that after the student "is enabled and armed to set on our Year Books, let him read first the later reports, for two causes: First, for that for the most part the latter judgments and resolutions are the surest, and therefore it is the best to season him with them in the beginning, both for the settling of his judgment and for the retaining of them in memory; secondly, for that the latter are more facile, and easier to be understood, than the more ancient; but, after the reading of them, then to read these others before mentioned, and all the ancient authors that have writen of our law, for I would wish our student to be a complete lawyer."[2]

IT is a beautiful expression of Lord Bacon's, that "he that robs in darkness breaks God's lock."

[1] Discourse on the Study of the Laws, p. 16, ed. 1824.
[2] Co. Litt. 249 b. 1 Kent Comm. 479.

THE rule that ignorance of the law shall not excuse a man, or relieve him from the penal consequences of a crime, is sometimes spoken of as arising from a presumption that every person knows the law. Mr. Justice Maule once observed that "There is no presumption in this country that every person knows the law: it would be contrary to common sense and reason if it were so." Martindale v. Falkner, 2 C. B. 720. This language was characterized by Mr. Justice Blackburn as clear, and common sense. Regina v. Tewksbury, L. R. 3 Q. B. 629; 37 L. J. Q. B. 288. No principle is better established than that ignorance of the law is no excuse for its violation. On the other hand, there is a class of cases in which the ignorance of facts is held to be a complete defence.[1]

IN The Protector v. Geering, Hardres, 99, Atkins says, arguendo, "Errors are like felons and traytors; *any* man may discover them; they do caput gerere lupinum."

IN Brown v. Littin, 1 P. Wms. 140, Lord Keeper Harcourt said, "that, this being an island, all imaginable encouragement ought to be given to trade."

[1] Heard Crim. Pl. 152.

LORD BACON, in his advice to Mr. Justice Hutton, says, "You should be a light to jurors to open their eyes, but not a guide to lead them by their noses."

TESTATORS should be prevented, if possible, "from sinning in their graves." This expression, which has become one of the current by-phrases always used in courts of equity on the fitting occasion, fell from Sir John Strange, in Thomas v. Brittnell, 2 Ves. Sen. 314.

"HEARSAY is no evidence; but it may be admitted in corroboration of a witness's testimony."[1]

SIR BARTHOLOMEW SHOWER'S mode of treating Monmouth's invasion is excellent for its brevity. "Memorandum. In Trinity Term, Monmouth's rebellion in the West prevented much business. In the vacation following, by reason of that rebellion, there was no assizes held in the western circuit; but afterwards five judges went as commissioners of oyer and terminer and gaol-delivery, *and three hundred and fifty-one of the rebels were executed*," etc.[2]

[1] Gilb. Ev. 890. [2] 2 Show. 434.

SIR FREDERICK THESIGER, afterwards Lord Chelmsford, being engaged in the conduct of a case, objected to the irregularity of a learned sergeant who repeatedly put leading questions in examining his witnesses. "I have a right," maintained the sergeant doggedly, "to deal with my witnesses as I please."—"To that I offer no objection," retorted Sir Frederick; "You may deal as you like; but you shan't lead."

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"THIS is a very impartial country for justice," said Sam. "There ain't a magistrate going as don't commit hisself twice as often as he commits other people."—*Pickwick*.

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IN the famous Burgess's Anchovy Case the [illegible] of the inventor were the litigants. [illegible] who succeeded to the business contended that the latter was nevertheless vending [illegible] Sir J. Knight Bruce, the Vice [illegible] sum up as follows: "All [illegible] entitled to manufacture [illegible] the less so that their [illegible] them. All the Queen's [illegible] names, and [illegible] done it

WHEN Thelwall was on his trial for high treason, he wrote the following note during the evidence for the prosecution, and sent it over to Erskine, his counsel: "I am determined to plead my cause myself." Erskine wrote under it, "If you do, you'll be hanged;" to which Thelwall replied, "Then I'll be hanged if I *do*."

LORD THURLOW, while at the bar, met a barrister one morning who accosted him with, "Oh! I am told that the barmaid at Nando's has a little baby." — "What the d—l is that to *me?*" — "But," pursued the barrister, "I hear the child is yours." — "Then what the d—l is that to *you?*"

WHEN Plunket was driven to resign the Irish Chancellorship, he was succeeded by Lord Campbell. The day of the latter's arrival was very stormy, and a friend remarked to Plunket how sick of his promotion the passage must have made the new-comer. "Yes," he replied ruefully; "but it won't make him throw up the seals."

LORD BROUGHAM defined a lawyer as "a legal gentleman who rescues your estate from your enemies, and keeps it himself."

IN manslaughter, according to the old authorities, there can be no accessories before the fact, for the offence is sudden and unpremeditated; and therefore, if A be indicted for murder, and B as accessory, if the jury find A guilty of manslaughter, they must acquit B. But the doctrine on the subject has been very differently adjudicated in recent cases, and must be limited to those cases where the act which causes the death is sudden and unpremeditated.[1] Thus, a man may be such an accessory by procuring poison for a pregnant woman to take in order to procure abortion, and which she takes, and thereby causes her death. Regina v. Gaylor, Dearsly & Bell C. C. 288; 7 Cox C. C. 253. During the argument in this case, Bramwell, B., said, "Suppose a man, for mischief, gives another

[1] To support an indictment for being accessory before the fact to manslaughter, as well as to other felonies, there must be an *active* proceeding on the part of the defendant: he must procure, incite, or in some other way encourage, the act of the principal. Therefore, where the defendant acted as stakeholder on the occasion of a prize fight which ended in the death of one of the fighters, but took no other part in the circumstances attending the fight, at which he was not present, than to hold the stakes, and hand them over afterwards to the winner, it was held that he could not be convicted as accessory before the fact to the manslaughter. During the argument Mr. Justice Mellor asked, "Can there be an accessory before the fact to a manslaughter of this kind, which is not in any way contemplated beforehand, but which occurs accidentally?" And the Court, without settling the question, quashed the conviction. Regina v. Taylor, L. R. 2 C. C. 147.

a strong dose of medicine, not intending any further injury than to cause him to be sick and uncomfortable, and death ensues, would not that be manslaughter? Suppose, then, another had counselled him to do it, would not he who counselled be an accessory before the fact?"

"The case of Regina v. Gaylor," said Mr. Justice Lord in a very recent case,[1] "is a peculiar one; and it is interesting, not for the principles of law which were or might be supposed to be settled by it, for the Court took time for advisement, and subsequently, as the report says, 'affirmed the conviction, but without giving their reasons for so doing;' but it is interesting rather by reason of the discussion between the judges and the counsel during the argument. Gaylor's wife had produced her own death by voluntarily taking a drug for the purpose, as she supposed, of procuring an abortion upon herself, though in fact she was not pregnant. The prisoner was indicted, not as an accessory before the fact to her murder, but for the substantive offence of manslaughter; and counsel and Court both indulged in interesting and acute queries as to the nature of the offences, both that committed by the wife and that by the husband; and various speculations as to the nature of the offence were suggested. The grounds suggested by the prisoner's counsel, upon

[1] Commonwealth v. Chiovaro, 129 Mass. 494, A.D. 1880.

which the Court should hold that the facts in the case did not constitute the crime of manslaughter were, that the prisoner's wife, in wilfully committing an unlawful act which might cause her death, and which, in fact, did cause her death, was a felo de se, and therefore guilty of the crime of murder; and also that the facts proved against the defendant showed him to be merely an accessory to the crime; and as in law there could be no such offence as an accessory before the fact in manslaughter, no offence was charged. It was evidently a case of novel impression, and although one or more of the judges were in doubt whether the doctrine, as laid down by Lord Hale, that there can be no accessory to manslaughter, might not admit of some qualification, under peculiar circumstances, we know only that the prisoner was held guilty of manslaughter, without knowing any of the grounds upon which the decision was based; and the last remark of Pollock, C. B., was, 'You have not satisfied me, that, as far as the woman is concerned, she has been guilty of any offence at all.' The interruptions of judges in the course of an argument are not adjudications."

This last remark is true; still, the discussions between the bench and the bar during an argument are not only entertaining and instructive, but the ratio decidendi is clearly brought out:

indeed, in most cases, these discussions are so exhaustive, that there is seldom any judgment pronounced at length. The entry is simply "conviction affirmed," or "conviction quashed," as the case may be.

THERE is a curious case in Fortescue's Reports, relating to the privilege of peers, in which the bailiff who arrested a lord was forced by the Court to kneel down and ask his pardon, though he alleged that he had acted by mistake, for that his lordship had a dirty shirt, a worn-out suit of clothes, and only sixpence in his pocket, so that he could not believe he was a peer, and arrested him through inadvertence.[1]

SERGEANT K. having made two or three mistakes while conducting a cause, petulantly exclaimed, "I seem to be inoculated with dulness to-day." — "Inoculated, brother?" said Erskine, "I thought you had it in the natural way."

CHIEF JUSTICE BUSHE, on being told that the judges in the Court of Common Pleas had little or nothing to do, remarked, "Well, well, they're quite equal to it."

[1] Lord Mordington's Case, Fort. 165.

IN a case in Liber Assisarum, J. was indicted for battery of R. and sued R. in trespass for the same battery: plea, son assault demesne, and issue thereon. T. H. one of those who indicted (found the bill), was of the inquest on the trial of the action of trespass, and gave a verdict for the plaintiff with twenty shillings damages; and T. H. was committed to the custody of the marshal, and fined for two causes, one of which was, that he was one of the indicters of the said J. whom now he has acquitted, and did not challenge himself.[1]

LORD CLARE one day brought a Newfoundland dog upon the bench, and began to caress the animal while Curran was addressing the Court. Of course, the latter stopped. "Go on, go on, Mr. Curran," said his lordship. "Oh! I beg a thousand pardons, my lord," returned the advocate: "I really thought your lordship was employed in consultation."

CRABB ROBINSON, just called to the bar, told Charles Lamb exultingly that he was retained in a cause in the King's Bench. "Ah," said Lamb; "the first great cause, least understood."

[1] Lib. Assis. 40 Edw. III. f. 241, A. pl. 10. 8 Ad. & El. 834 note.

LORD KENYON thus addressed a dishonest butler who had been convicted of stealing large quantities of wine from his master's cellar: "Prisoner at the bar, you stand convicted, on the most conclusive evidence, of a crime of inexpressible atrocity, — a crime that defiles the sacred springs of domestic confidence, and is calculated to strike alarm into the breast of every Englishman who invests largely in the choicer vintages of Southern Europe. Like the serpent of old, you have stung the hand of your protector. Fortunate in having a generous employer, you might, without dishonesty, have continued to supply your wretched wife and children with the comforts of sufficient prosperity, and even with some of the luxuries of affluence; but dead to every claim of natural affection, and blind to your own real interest, you burst through all the restraints of religion and morality, and have for many years been feathering your nest with your master's bottles."

JEKYLL one day received an invitation to Lansdowne House, but excused himself by a prior engagement to meet the judges. During the dinner a part of the ceiling at Lansdowne House fell in. Jekyll afterwards described his escape thus: "I was asked to *ruat cœlum*, but dined instead with *fiat justitia*."

A MAN having been convicted of bigamy before Mr. Justice Maule, the following dialogue took place: —

CLERK OF ASSIZE. What have you to say why judgment should not be passed upon you according to law?

PRISONER. Well, my lord, my wife took up with a hawker, and ran away five years ago; and I have never seen her since, and I married this woman last winter.

Mr. JUSTICE MAULE. I will tell you what you ought to have done; and, if you say you did not know, I must tell you that the law conclusively presumes that you did. You ought to have instructed your attorney to bring an action against the hawker for criminal conversation with your wife. That would have cost you about a hundred pounds. When you had recovered substantial damages against the hawker, you should have instructed your proctor to sue in the Ecclesiastical Courts for a divorce a mensâ et thoro. That would have cost you two hundred or three hundred pounds more. When you had obtained a divorce a mensâ et thoro, you would have had to appear by counsel before the House of Lords for a divorce a vinculo matrimonii. The bill might have been opposed in all its stages in both Houses of Parliament, and altogether you would have had to spend about a thousand or twelve hundred pounds.

You will probably tell me that you never had a thousand farthings of your own in the world; but, prisoner, that makes no difference. Sitting here as a British judge, it is my duty to tell you that this is not a country in which there is one law for the rich, and another for the poor.

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THE following is an extract from a case decided by the Supreme Judicial Court of Massachusetts. The facts are sufficiently stated in the opinion, which was delivered by Mr. Justice Cushing: —

"Eliakim Willis was pastor of the parish of Malden; a bachelor, or a widower without children; a devout old man of the state of theological opinion prevailing at the close of the last century, when Puritanism, though ceasing to be exclusive, was not the less earnest and sincere. He was from New Bedford, where he had a brother, Ebenezer Willis, still living; and he retained there, as a reminiscence of his youth, the old family pew in the North Meeting House. By prudence and care he had economized out of his modest salary as a country clergyman a decent estate, consisting chiefly of land. His brothers, Ebenezer and Jireh, were, it may be presumed, reasonably well off; for he bequeathed to them by his will some personal objects only, as tokens of remembrance and affec-

tion. He had a widowed sister, Mercy Marchant, for whose comfortable support through life he provided. He remembered the church in which he had so long ministered, and gave to it his favorite copy of the Bible, to be read in public on every Lord's Day.

"He then looked around for some object of general philanthropy worthy of his regard. He doubted, but on the whole came to a wise conclusion, and resolved to make a donation to the Society for the Propagation of the Gospel among the Indians, who, he might have reflected, had not been over-well treated, either by England or by her colonies in New England. As to family connections, he had a favorite niece, who had passed through her romance of youth, had married, and been left by her deceased husband a widow, with two children, but without property, and had been invited by her good uncle to look to him for support, and probably been taken into his family. Among the parishioners of Mr. Willis was a substantial and worthy gentleman, himself a widower, apparently with a child or children. A very natural event followed. Col. Popkin married the still comely widow; and a third family grew up under the eyes, and enjoying the affection, of Mr. Willis. Such was the condition of the family when the will was made.

"Mr. Willis looked considerately after his own

affairs, but consulted Col. Popkin, and was tenderly cared for by his niece, Mrs. Popkin. They were his children in affection. Accordingly, in making general disposition of his property, he divided the bulk of it equally between the fruits, respectively, of the first and second marriages of his niece, providing, however, that she should have the improvement of the whole estate during her natural life. But here doubts as to the law came into his mind. The spectre of the celebrated rule in Shelley's Case rose before him. Perhaps, for it happened during his life, he had read or heard of the tribulation and perplexities of the Earl of Mansfield in the case of Perrin v. Blake. And accordingly, after making the devise to the two sets of his niece's children, with reservation of a life estate in his niece, he added the following words: 'If it is not contrary to the laws of this Commonwealth — the preceding article notwithstanding — if it is contrary, this item I hereby make null and void, so as in no way to affect the other items of this my last will.' In this way his niece and her children were amply considered, and the whole office of gratitude and love to them, and each of them respectively, was faithfully performed so far as the case would allow it to be done." [1]

[1] Popkin v. Sargent, 10 Cush. 332, 333.

IN the case of James v. Commonwealth, 12 S. & R. 220, it was decided that the ducking-stool is not the punishment of a common scold in Pennsylvania. Mr. Justice Duncan delivered a very lengthy and amusing opinion, in which he exhausted the entire learning on the subject. We present two short extracts; but the whole opinion is well worthy of perusal. "Now, I ask," he says, "with as much gravity as I can command, if Mrs. Thrale — the widow of the great brewer Thrale, the rich, learned, accomplished, and fashionable Mrs. Thrale — had not put sufficient malt in her liquor, if she should be exposed to the punishment of the cucking-stool, and be ducked in stinking water; or if the celebrated Dr. Johnson — the leviathan of learning, the executor of Mr. Thrale's will — had broken the assize, if the pillory would have been his punishment? for I think we are informed by Mr. Boswell that he saw him in the brewery, attending to its concerns, and bustling about, with his inkhorn tied to the button of his coat; or would he be ducked in stercore, for Jacobs, in his Dictionary informs us the trebucket was a punishment for brewers and bakers, who were ducked in stercore, or in stinking water; and we must never forget that the law professes equality of punishment; that the common law, which stamps freedom and equality upon all who are subject to it, which protects and punishes with an equal hand

the high and the low, the proud and the humble, I say professes, for in the trebucket punishment we shall presently see that it was never intended for the rich, and never was inflicted on beauty and youth."

And again, at p. 235: "I am far from professing the same reverence for all the degrading and ludicrous punishments of the early days of the common law, — I am far from thinking that this is an unbroken pillar of the common law, or that to remove this rubbish would impair a structure which no man can admire more than I do. But I must confess I am not so idolatrous a worshipper as to tie myself to the tail of this dung-cart of the common law."

SIR FLETCHER NORTON, whose want of courtesy was notorious, happened, while pleading before Lord Mansfield on some question of manorial right, to say, "My lord, I can illustrate the point in an instant in my own person. I myself have too little *manors*." — "We all know it, Sir Fletcher," interposed the judge with one of his blandest smiles.

SELF-DEFENCE is the clearest of all laws; and for this reason, — the lawyers didn't make it. — *Douglas Jerrold.*

IN a very recent case a learned judge thus suggestively premises his opinion: "The full argument of counsel, occupying *seventeen entire days*, and an examination of the records, have satisfied me," etc. It has been well said that there must remain some humor and some patience in the Fifth Circuit.[1]

WHEN Daniel O'Connell, while conducting a case before Lord Norbury, observed, "Pardon, my lord, I am afraid your lordship does not apprehend me," the Chief Justice (alluding to a report that O'Connell had avoided a duel by surrendering himself to the police) retorted, "Pardon me also: no one is more easily apprehended than Mr. O'Connell — whenever he wishes to be apprehended."

IN the perusal of a very solid book on ecclesiastical law, including the progress of the ecclesiastical differences in Ireland, written by a native of that country, after a good deal of tedious and vexatious matter, the reader's complacency is restored by an artless statement how an eminent person "abandoned the errors of the Church of Rome, and adopted those of the Church of England."

[1] Gaines v. Lizardi, 3 Woods C. C. 78.

"I HEAR," said somebody to Jekyll, "that our friend Smith the attorney is dead, and leaves very few effects." — "It could scarcely be otherwise," returned Jekyll: "he had so very few causes."

THE following is a specimen of Mr. Justice Maule's way of addressing a jury: —

Gentlemen, the learned counsel is perfectly right in his law. There is *some* evidence upon that point. But he is a lawyer, and you are not; and you don't know what he means by *some* evidence, and so I'll tell you. Suppose there was an action on a bill of exchange, and six people swore they saw the defendant accept it, and six others swore they heard him say that he should have to pay it, and six others knew him intimately, and swore to his handwriting. And suppose, on the other side, they called a poor old man who had been at school with the defendant forty years before, and not seen him since, and he said he rather thought the acceptance was not his writing: why, there would be *some* evidence that it was not. And that is what the learned counsel means in this case.

"THE formality of the law is the prudery of a harlot."[1]

[1] Phillimore Ev. 206.

"MY client," said an Irish advocate, pleading before Lord Norbury in an action for trespass, "is a poor man. He lives in a hovel, and his miserable dwelling is in a forlorn and dilapidated state; but, thank God! the laborer's cottage, however ruinous its plight, is his sanctuary and his castle. Yes, the winds may enter it, and the rain may enter it; but the King cannot enter it."—"What, not the *reigning* king?" inquired his lordship.

GILBERT À BECKETT celebrated his elevation to the office of magistrate at the Greenwich Police Court by a characteristic pun. A gentleman came before him to prefer a charge of robbery with violence, committed in the middle of the night. In stating his case he mentioned that the assault occurred while he was returning home from an evening party. The worthy magistrate interrupted him by observing, "Really, sir, I cannot make up my mind to accept any thing like an *ex parte* statement."

IN Finch's Law, p. 220, sorcery is thus defined: "Sorcery is a consulting with devils, and containeth under it conjuring, necromancy, and such like."

A BARRISTER opened a case very confusedly before Mr. Justice Maule. "I wish, sir," interrupted the judge, "you would put your facts in some order: chronological order is the best; but I am not particular. Any order you like,—alphabetical order."

A CURIOUS case is reported in the Year Book, 4 Henry VII. 5, in which an ecclesiastical chancellor, Archbishop Morton, threatened a defendant with punishment in the next world, as the common law could not reach him in this. The suit was against an executor who had released a debt due to the testator without the assent of his coexecutor. It was argued that the law gave no remedy against such an act.

CHANCELLOR. Sir, I know well that every law is, or of right ought to be, according to the law of God; and the law of God is that an executor who is of evil disposition shall not expend all the property; and I know well that if he does so, and does not make amends, or is not willing to make restitution, if it be in his power, he shall be damned in hell.

A PETITION to the House of Lords was once rejected for omitting the word "humbly."[1]

[1] 40 Parl. Del. 1270.

MRS. J. L., who was a widow and childless, aged seventy-five, within a few days after first seeing H., who claimed to be a "spiritual medium," was induced, from her belief that she was fulfilling the wishes of her deceased husband, conveyed to her through the medium of H., to adopt him as her son, and transfer twenty-four thousand pounds to him, to make her will in his favor, afterwards to give him a further sum of six thousand pounds, and also to settle upon him, subject to her life-interest, the reversion of thirty thousand pounds, — these gifts being made without consideration and without power of revocation. Of course in a Court of Equity these voluntary gifts were set aside.[1]

SIR G. M. GIFFARD, V. C.: "I have to observe that the system of 'spiritualism' as presented by the evidence is mischievous nonsense, well calculated, on the one hand, to delude the vain, the weak, the foolish, and the superstitious; and on the other to assist the projects of the needy and of the adventurer; and lastly, that beyond all doubt there is plain law enough and plain sense enough to forbid and prevent the retention of acquisitions such as these by any 'medium,' whether with or without a strange gift; and that this should be so is of public concern, and, to use the words of Lord Hardwicke, 'of the highest public utility.'"

[1] Lyon v. Home, L. R. 6 Eq. 655.

A MAN being condemned to the pillory in or about Elizabeth's time, the foot-board on which he was placed proved to be rotten, and down it fell, leaving him hanging by the neck in danger of his life. On being liberated, he brought an action against the town for the insufficiency of its pillory, and recovered damages.

A GENERAL principle of universal application is thus tersely expressed: "A contract in one place makes a man a debtor in every place." 1 Saund. 74, 6th ed.

A BAILIFF who had been compelled to swallow a writ, rushing into Lord Norbury's court to proclaim the indignity done to justice in his person, was met by the expression of a hope that the writ was "*not returnable* in this court."

WHERE a party has the power to consummate the marriage by sexual intercourse, but refuses to do it, this is not impotency; but it is doubtful whether it is not malicious desertion, justifying divorce.[1]

[1] The case of Southwick v. Southwick, 97 Mass. 327, and Cowles v. Cowles, 112 Mass. 298, decide that it is not.

SIC utere tuo ut alienum non laedas. This maxim was once discarded unceremoniously by Mr. Justice Erle. "The maxim," he said, "is mere verbiage. A party may damage property where the law permits, and may not where the law prohibits: so that the maxim can never be applied till the law is ascertained; and when it is, the maxim is superfluous."[1]

LORD ABINGER had a clear way of putting a point. When a question was raised by government with respect to the right of persons to take water from Portsmouth Harbor, Lord Abinger said: "An old woman must not take a bucket of water from that harbor, lest a seventy-four should not float."[2]

IN The Case of Swans, 7 Rep. 16, it was held that the swan is a royal fowl, and that all *white* swans *not marked*, which have gained their natural liberty, and are found swimming in an open and common river, may be seized to the King's use by his prerogative. Whether the same prerogative applies to *black* swans the authorities do not inform us.

[1] Bonomi v. Backhouse, El. Bl. & El. 643; 27 L. J. Q. B. 388.
[2] Per Alderson, B. in Embrey v. Owen, 15 Jur. p. 636.

REX v. JOHNSON, Comberbach, 377. The marginal note runs thus: "Fine on indictment for lying with another man's wife. Q." The report states that "The defendant appeared to be fined upon an indictment for seducing and lying with another man's wife. Northy moved to charge him with an action; but the Court would not suffer that, now he comes to submit to a fine."

IN a recent case in Louisiana, Mr. Justice Howe uses the following language in delivering the judgment: "We need in criminal matters the 'justice, mercy, and truth' of the common law, and not its 'mint, anise, and cumin.' There is no more need that the State of Louisiana should make vain repetitions in her pleadings than there is that her Christians should make them in their prayers."[1]

IN the preface to Fortescue's Reports, which consists of thirty-one folio pages, we are informed that "The grand division of law is into the divine law and the law of nature; so that the study of law in general is the business of men and angels. Angels may desire to look into both the one and the other; but they will never be able to fathom the depths of either."

[1] State v. Phelps, 24 La. Ann. 492.

IN The Queen v. Hartnett, Jebb, C. C. 302, the judge omitted, in pronouncing sentence on a conviction for murder, to order that the bodies of the prisoners should be buried within the precincts of the jail, as directed by statute; but on a subsequent day, on ruling the book at the close of the same assizes, in the absence of the prisoners, ordered the above clause to be inserted. It was held by a majority of the judges that the original sentence of death was illegal, because it did not contain an order that the bodies should be buried within the precincts of the jail; that the statute was not merely directory, but made the order a part of the sentence. The prisoners were discharged.

IN the case of Drake v. State, 51 Ala. 30, is this note in the margin by the reporter: "The reporter does not believe that the opinion in this case was intended to change the settled rule of law as laid down in the several cases cited, and he has therefore made the head-note conform to those cases, and not to the language of the opinion."

MR. JUSTICE MAULE once asked, "What difference is there between 'discretion' and 'sound discretion?'"[1]

[1] Regina v. Darlington, 6 Q. B. 700.

"THE Albany Law Journal" makes mention of a statute of New York which allowed deductions of a certain number of days to be made on account of good behavior from the term of imprisonment of convicts, with a proviso that the statute should not apply to any person *sentenced for the term of his natural life.*

WE see that works of nature are best preserved from their own beginnings, frames of policy are best strengthened from the same ground they were first founded, and justice is ever best administered when laws be executed according to their true and genuine institution.[1]

A WITTY reporter writes this head-note: "It seems that a married man intending to effect seduction may blunder into bigamy."[2]

LAWS are often mere notice-boards set up in out-of-the-way places where no one can read them. If you wish to keep people off a road, close it with a barrier that stops the most heedless man at the very entrance. It is better to make trespass impossible than forbid it. — *Joubert.*

[1] Pref. to 8 Rep. p. xxvi. [2] Hayes v. People, 25 N.Y. 390.

PROFESSOR CHRISTIAN says that the description of law given by Demosthenes is perhaps the nearest perfect and the most satisfactory that can be found or conceived:[1]—

"The design and object of laws is to ascertain what is just, honorable, and expedient; and when that is discovered, it is proclaimed as a general ordinance, equal and impartial to all. This is the origin of law, which, for various reasons, all are under an obligation to obey, but especially because all law is the invention and gift of Heaven, the sentiment of wise men, the correction of every offence, and the general compact of the State; to live in conformity with which is the duty of every individual in society."[2]

THERE are some acts of justice which corrupt those who perform them. — *Joubert.*

[1] 1 Bl. Comm. 44 note, 12th ed.

[2] Cont. Aristog. I. § 19. Kennedy translates: "Laws desire what is just and honorable and useful; they seek for this, and when it is found, it is set forth as a general ordinance, the same and alike for all; and that is law, which all men ought to obey for many reasons, and especially because every law is an invention and gift of the Gods, a resolution of wise men, a corrective of errors intentional and unintentional, a compact of the whole State, according to which all who belong to the State ought to live." Cf. Hooker's noble description of Law, in Eccles. Polit. I. 16, 8, and Church's Notes, p. 135, where he compares Dante, Paradi. I. 104–121.

THE absurdity of requiring a plurality of witnesses, except in cases of treason, perjury, etc., is illustrated in a case in which a husband, having, with a female servant, found his wife with her paramour, recovered before a jury five hundred pounds damages of the latter, but in the Ecclesiastical Court was refused a divorce which was prayed for upon the same evidence.[1]

A JUSTICE of the peace sends the servant of L. R. to the house of correction for being saucy, and giving too much corn to his horses. The Court held this was not a sufficient cause to send a man to the house of correction.[2] According to a crown case reserved, decided long afterwards, the servant might have been committed for larceny.[3]

SHOWER reports a case of sharp practice, in which "the attorney and counsel both were checked for this snapping practice;" and they were told by Scroggs, Chief Justice, that "since you have gone so vigorously to work, we will use the rigor of the law against you."[4]

[1] Evans v. Evans, 1 Robertson Eccl. 165.
[2] The King v. Okey, 8 Mod. 45.
[3] The King v. Morfit, Russell & Ryan C. C. 307.
[4] Harwood v. Wheeler, 2 Show. 79.

CHIEF BARON POLLOCK observed, in the course of the argument of a crown case reserved: "The word 'indecently' has no definite legal meaning; and with respect to the word 'presence,' I remember that in our older courts of justice the judge retired to a corner of the court for a necessary purpose, even in the presence of ladies. That, perhaps, would be considered indecent now."[1]

JUSTICE is truth in action. — *Joubert.*

MR. JOHN MITCHELL KEMBLE once related, that among other illustrations of ancient tenures, forest rights, etc., which he had picked up at Addlestone, was the custom of deciding how far the rights of the owner of land extended into the stream on which his property is situated by a man standing on the brink with one foot on the land, and the other in the water, and throwing a tenpenny hatchet into the water: where the hatchet fell was the limit. This he had learned from an old man born and bred in the forest who remembered having once seen it done.[2]

[1] Regina v. Webb, 2 C. & K. 938.
[2] The Nineteenth Century, July, 1881, p. 75.

NO man ought to fill the position of both advocate and judge at the same time and place. The following anecdote sets this in a stronger light than any discussion of the subject. Whilst a prisoner was being tried before a commissioner, the solicitor for the defence asked his counsel to raise some frivolous objection. The counsel refused, on the ground that the commissioner would overrule it. The solicitor replied, "Oh! he is all right. I have just given his clerk a brief."[1]

MR. JUSTICE MAULE was in the act of passing sentence upon a man, when the governor of the county jail came to the table to deliver some calendars to members of the bar, and in so doing passed between the prisoner and the judge, who thereupon intimated to the governor that in so doing he had outraged one of the best known conventional rules of society. "Don't you know," said the judge, "you ought never pass between two gentlemen when one gentleman is addressing another?" The offender against this conventional rule apologized and retired, whereupon the judge sentenced the other gentleman to seven years' transportation.

[1] Sir James Stephen, in The Nineteenth Century, December, 1877, p. 744.

IN an action to recover damages for an illegal invasion, by imitation, of the plaintiff's trade-mark for the sale of a certain washing powder, Mr. Justice Sanderson gives this description of the plaintiff's label: —

"The plaintiff's label commences with a highly-colored picture, representing a washing-room with tubs, baskets, clothes-lines, etc. There are two tubs painted yellow, at each of which stands a female of remarkably muscular development, with arms uncovered, and clad in a red dress, which is tucked up at the sides, exposing to view a red petticoat with three black stripes running around it near the lower extremity. Each is apparently actively engaged in washing; and clouds of steam are gracefully rolling up from the tubs, and dispersing along the ceiling. In the background is extended across the room a clothes-line, upon which are suspended stockings and other undergarments, which have evidently just been put to use in testing the cleansing properties of the plaintiff's washing powder. To the left of the washerwomen stands a lady in a yellow bonnet, red dress, green Congress gaiters, and hoops of ample circumference; upon her left arm is suspended a yellow basket; and in her left hand, which is encased in a red glove, is held a red parasol; while the right, which is encased in a green glove, is gracefully extended towards the

nearest washerwoman in an attitude of earnest entreaty. In the immediate foreground is a yellow and green clothes-basket full of dirty linen, and a yellow and green soap packing-box, upon which are printed in small capitals, the words, 'Standard Co.'s Soap.' Each washtub is supported by a four-legged stool, some of the legs being yellow, some red, some green, and some all three. The floor of the room, as to color, is in part of a yellowish green, and in part of a greenish red; while the walls are of a grayish blue. This is but an imperfect description of the picture with which the plaintiff's label is adorned. The design is good, for it is eminently suggestive of the character of the plaintiff's goods."

The learned judge then proceeds to give an humorous description of the defendant's labels.[1]

SIR JOHN NICHOLL, in pronouncing judgment in one case, said that the woman was past the age of child-bearing at the time of the marriage, therefore the primary and most legitimate object of wedlock, the procreation of issue, could not operate; and a man of sixty who marries a woman of fifty-two should be contented to take her *tanquam soror*."[2]

[1] Falkinburg v. Lucy, 35 Cal. 52, 61.

[2] Brown v. Brown, 1 Hagg. Eccl. 523.

IN a celebrated case, Pollock, C. B., observed:[1] "We have had in this county no Court of Criminal Equity since the Star Chamber was abolished, as Lord Campbell called it, in a case which was tried before him."[2]

IN Webb v. Weatherby, 1 Bing. N. C. 504, counsel, contending that a replication was ill, urged in conclusion, that "a departure from forms so long established will weaken the foundation and shake the whole fabric of the law of England." Tindal, C. J., quietly said: "I hope the law of England will not be much disturbed if we overrule this demurrer."

THE marginal note to Clement's Case, 1 Lewin C. C. 113, runs thus: "Possession in Scotland evidence of stealing in England." This is the summary of a case of horse-stealing tried at Carlisle, the evidence being that the horse was a few days afterwards found in the prisoner's possession across the border; and it has been made the ground for much gibing by the English, at the acquisitive propensities of their Northern brethren.

[1] Attorney General v. Sillem, 2 H. & C. 509.
[2] Emperor of Austria v. Day, 3 DeG. F. & J. 239.

LORD ELDON lent two large volumes of precedents to a friend, and could not recollect to whom. In allusion to such borrowers, he observed, that, "though backward in *accounting*, they seemed to be practised in *book-keeping*."

IT may be a consolation to the bar to know that many years ago the Court of Common Pleas refused to hear an affidavit read, because the barrister therein named had not the addition "esquire" to his name.[1]

"THE King being God's lieutenant cannot do a wrong."—11 Rep. 72 a.

THERE is a very ancient precedent of judges going *circuit*. "And he went from year to year in circuit to Bethel, and Gilgal, and Mizpeh, and judged Israel in all those places."—1 SAM. vii. 16.

BY the Court: "You cannot change your attorney without leave of Court, to be obtained on motion, though he be ever so great a cheat."[2]

[1] 1 Wils. 245.
[2] 7 Mod. 50.

IN an action against a railway company for personal injury to a passenger, a medical practitioner of eminence, the jury, in assessing the damages, may take into their consideration the loss he has sustained through his inability to continue a lucrative professional practice.[1] At the first trial the jury awarded the plaintiff seven thousand pounds damages. The Queen's Bench Division directed a new trial, on the ground of the inadequacy of the damages, conceiving that the jury had failed to take into account all the heads of damage in respect of which the plaintiff was by law entitled to compensation; more especially the pecuniary loss which he had sustained through his inability to practise his profession.[2] The decision of the Queen's Bench Division was affirmed by the Court of Appeal.[3] At the second trial the jury awarded the plaintiff sixteen thousand pounds.

ONE of the Seven was wont to say that laws were like cobwebs; where the small flies were caught, and the great brake through.[4]

[1] Phillips v. London & South Western Railway Co. 5 C. P. D. 280.

[2] 4 Q. B. D. 406.

[3] 5 Q. B. D. 78.

[4] Bacon's Apothegms, No. 181. Cf. Webster, The Famous History of Sir Thomas Wyat, ed. Dyce 1859, p. 201:—

"Great men, like great flies, through law's cobwebs break."

A COUNSEL thought that he would overcome Lord Norbury on the bench. So on one day when Lord Norbury was charging a jury, and the address was interrupted by the braying of a donkey: "What noise is that?" cried Lord Norbury. "'Tis only the echo of the Court, my lord," answered Counsellor Readytongue. Nothing disconcerted, the judge resumed his address; but soon the barrister had to interpose with technical objections. While putting them, again the donkey brayed. "One at a time, if you please," said the retaliating joker.

MAXIMS are to the intellect what laws are to actions: they do not enlighten, but they guide and direct, and, although themselves blind, are protective. They are like the clew in the labyrinth, or the compass in the night. — *Joubert.*

THERE is a curious anecdote related of Sir Thomas Moore. He one day invited the judges to dine with him, and after dinner showed them the number and nature of the cases in which he had granted injunction to the Courts of Common Law. The judges, upon full debate of the matters, confessed that *they could have done no otherwise themselves.*

THE St. 7 & 8 Geo. IV. ch. 30, § 16 enacts that "If any person shall unlawfully and maliciously kill, maim, or wound *any* cattle," he shall be guilty of felony. The prisoner was indicted under this statute for killing a gelding. Sir Gregory Lewin, for the prisoner, moved in arrest of judgment, and contended that the indictment ought to have averred that the gelding was "cattle." He referred the presiding judge to Dr. Johnson's definition of a gelding, viz., "any animal that is *castrated*," and to the following well-known couplet in Hudibras: —

> "The sow-gelder blew his horn
> To geld a cat, but cried reform."

On a case reserved, the indictment was held to be sufficient.[1]

THERE is an amusing story told of Lord Camden, when a barrister, having been fastened upon the stocks on the top of a hill, in order to gratify an idle curiosity on the subject. Being left there by the absent-minded friend, who had locked him in, he found it impossible to procure his liberation for the greater part of the day. On his entreating a chance traveller to release him, the man shook his head and passed on, remarking that of course he was not put there for nothing.

[1] Clark's Case, 1 Lewin C. C. 229, 232.

REMORSE is the punishment of crime; repentance, its expiation. The former appertains to a tormented conscience; the latter, to a soul changed for the better. — *Joubert.*

A CERTAIN Mr. Nathaniel Redding, who had formerly practised at the bar, had been convicted before justices of oyer and terminer, by virtue of a special commission, for endeavoring to persuade a witness against the noblemen imprisoned in the Tower to forbear his prosecution of them. For this offence Mr. Redding was set in the pillory, and fined one thousand pounds, with imprisonment till it was paid. The King [Charles II.] remitted his fine; and when discharged, he came into court, requiring an information, at his suit, to be filed against the commissioners who had condemned him: "of whom," says the reporter (who was afterwards successively a judge in each of the three superior courts), "my brothers Jones and Dolben were two." The Court declared him incompetent to do so, and caused his words, accusing the two judges of oppression, to be recorded; and then "for having uttered those words, and having also become infamous by standing on the pillory, the gentlemen at the bar *did pray that his gown might be pulled over his ears; which was ordered and executed in court:* and he

was also condemned in court to pay the King a fine of five hundred pounds, and be imprisoned till he paid it."[1]

This case has been presented to the reader because of the singularity of its circumstances. It appears to be also the only instance recorded in our books of misconduct by a member of the bar, judicially cognizable, and punished because of his being such: a fact of itself eloquently significant.

MR. JUSTICE MAULE, in summing up a case of libel, and speaking of a defendant who had exhibited a spiteful piety, observed: "One of these defendants is, it seems, a minister of religion: of *what* religion does not appear; but to judge by his conduct, it cannot be any form of Christianity."

THE reason of the law is the life of the law; for though a man can tell the law, yet, if he know not the reason thereof, he shall soon forget his superficial knowledge. — Co. Litt. 183 b.

[1] Sir Thomas Raymond's Reports, p. 376, headed thus: "Memorandum, June 18, 1680." "He seemed to complain much," adds Raymond, "for not being allowed a writ of error to reverse his judgment before the commissioners." On the last day of term his fine and imprisonment were remitted on his petition; a recognizance, however, being taken for his good behavior.

NIHIL habeat forum ex scenâ is one of Bacon's maxims; but he there refers to fictitious cases brought into the courts in order to determine points of law.[1] Sergeant Maynard, who died in the reign of William III., is said to have had "the ruling passion strong in death" to such a degree, that he left a will purposely worded so as to cause litigation, in order that sundry questions which had been "moot points" in his lifetime might be settled for the benefit of posterity.

LORD COKE says that the official reporters ceased about the end of the reign of Henry VII.; and the reason he gives for it is sufficiently quaint: "So as about the end of the reign of Henry VII. it was thought by the sages of the law that at that time the Reports of the law were sufficient, wherefore it may seem unnecessary and unprofitable to have any more reports of the law." — 3 Rep. xxix.

IN the comprehensive words used by the Court in 6 Mod. 231, the bail have the principal always upon the string, and may pull it when they please, to render him in their own discharge. — 8 Pick. 140.

[1] See De Augm. Scient. lib. viii. cap. 3, aph. 91. Works, vol. V. p. 107, ed. Ellis and Spedding.

## PUNCH ON SPECIAL PLEADING.

### INTRODUCTION.

BEFORE administering law between litigating parties, there are two things to be done, in addition to the parties themselves, — namely, first to ascertain the subject for decision, and, secondly, to complicate it so as to make it difficult to decide. This is effected by letting the lawyers state in complicated terms the simple cases of their clients, and thus raising from these opposition statements a mass of entanglement which the clients themselves might call nasty crotchets, but which the lawyers term "nice points." In every subject of dispute with two sides to it, there is a right and a wrong; but in the style of putting the contending statements, so as to confuse the right and the wrong together, the science of special pleading consists. This system is of such remote antiquity that nobody knows the beginning of it, and this accounts for no one being able to appreciate its end. The accumulated chicanery and blundering of several generations, called in forensic language the "wisdom of successive ages," gradually brought special pleading into its present shape, or, rather, into its present endless forms. Its extensive drain on the pockets of the suitors has rendered it always an important branch of legal study; while, when

properly understood, it appears an instrument so beautifully calculated for distributive justice, that, when brought to bear upon property, it will often distribute the whole of it among the lawyers, and leave nothing for the litigants themselves.

## CHAPTER I.

### OF THE PROCEEDINGS IN AN ACTION, FROM ITS COMMENCEMENT TO ITS TERMINATION.

ACTIONS are divided into *Real*, in which there is often much sham; *Personal*, in which the personality is frequently indulged in by counsel, at the expense of the witnesses; and *Mixed*, in which a great deal of pure nonsense sometimes prevails. The Legislature, being at last sensible to the shamness of Real and the pure nonsense of Mixed actions, abolished all except four; and for the learning on these subjects, now become obsolete, we must refer to the "books," which have been transferred to the shops of Butter from the shop of Butterworth.[1]

There are three superior Courts of Common Law, one of their great points of superiority being their superior expense, which saves the Common Law from being so common as to be positively vulgar; and its high price gives it one of the qualities of a luxury, rendering it *caviare* to the

[1] Butterworth, the Law Publisher in Fleet Street.

million, or indeed to any but the *millionnaire.* These courts are the Queen's Bench, — a bench which five judges sit upon; the Exchequer, whose sign is a chess or draught board, some say to show how difficult is the game of law, while others maintain it is merely emblematic of the drafts on the pockets of the suitor; and, thirdly, the Common Pleas, which took its title, possibly, from the fact of the lawyers finding the profits such as to make them un-Common-ly Pleas'd.

The real and mixed actions not yet abolished are, first, the Writ of Right of Dower, and second, the Writ of Dower; both relating to widows: but as widows are formidable persons to go to law against, these actions are seldom used. The third is the action of Quare Impedit, which would be brought against me by a parson if I kept him out of his living; but, as the working parsons find it difficult to get a living, this action is also rare. The fourth is the action of Ejectment, for the recovery of land, which is the only action that cannot be brought without some ground.

Of personal actions, the most usual are debt, and a few others; but we will begin by going into debt as slightly as possible. The action of debt is founded on some contract, real or supposed; and when there has been no contract, the law, taking a contracted view of matters, will have a contract implied. Debt, like every other personal action,

begins with a summons, in which Victoria comes "greeting;" which means, according to Johnson, "saluting in kindness," "congratulating," or "paying compliments at a distance:" but, considering the unpleasant nature of a writ at all times, we cannot help thinking that the word "greeting" is misapplied. The writ commands you to enter an appearance within eight days; and, by way of assisting you to make an appearance, the writ invests you, as it were, with a new suit.

The action of Covenant lies for breach of covenant, that is to say, a promise under seal; and under wafer it is just as binding, for you are equally compelled to stick to it like wax.

The action of Detinue lies where a party seeks to recover what is detained from him; though it does not seem that a gentleman detaining a newspaper more than ten minutes at a coffee-house would be liable to detinue, though the action would be an ungentlemanly one, to say the least of it.

The action of Trespass lies for an injury committed with violence, such as assault and battery, either actual or implied; as if A, while making pancakes, throws an egg-shell at B, the law will imply battery, though the egg-shell was empty.

The action of Trespass on the Case lies where a party seeks damages for a wrong to which trespass will not apply, — where, in fact, a man has

not been assaulted or hurt in his person, but where he has been hurt in that tender part, his pocket. Of this action there are two species, called assumpsit — by which the law, at no time very unassuming, assumes that a person legally liable to do a thing has promised to do it, however unpromising such person may be — and trover, which seeks to recover damages for property which it is supposed the defendant found and converted; so that an action might perhaps be brought in this form to recover from Popery those who have been found and converted to the use, or rather lost and converted to the abuses, of the Romish Church.

Having gone slightly into the different forms of actions; having just tapped the reader on the shoulder with a writ in each case, which, by the way, should be personally served on him at home, though the bailiff runs the risk of getting sometimes served out, we shall proceed to trial — perhaps of the reader's patience — in a subsequent chapter.

## CHAPTER II.

### OF THE DECLARATION.

THE writ being now served, it is next to be returned, and this is sometimes done by giving it back at once to the bailiff, or throwing it in his face. Such quick returns as these would bring such very small profit to a plaintiff, that they are not allow-

able; and the writ can only be returned by the sheriff bringing it back, on a certain day, into the superior court. He then gives a short account, in writing, of the manner in which the writ has been executed; but if the bailiff has been pumped upon, as we find reported in Shower, or pelted with oysters, as in Shelley's Case, or kicked down stairs, as he was in Foot against the Sheriff, it does not seem that the particulars need be set forth.

If the defendant does not appear within eight days after the writ has come "greeting," as if it would say "my service to you," the plaintiff may, in most cases, appear for him: and this shows how true it is that appearances are often deceitful and treacherous; for, when a plaintiff appears for a defendant, it is only to have an opportunity of appearing against him at the next step.

The pleadings now commence, which were originally delivered orally by the parties themselves in open court, when success might depend on length of tongue; but the parties themselves being got rid of in the modern practice, and the lawyers coming in to represent them, success usually depends on length of purse. The object of pleading, whether oral or written, is to bring the parties to an issue, which means literally a way out; but in practice the effect of getting plaintiff and defendant to an issue is to let them both regularly in.

Almost all pleas, except those of the simplest kind, must be signed by a barrister; who does not usually draw the plea, but he merely draws the half guinea for the use of his name. The pleading begins with the declaration, in which the plaintiff is supposed to state the cause of action, but in which he gives such an exaggerated account of his grievances that not more than one-tenth of what he states is to be believed. For example, if A has had his nose slightly pulled by B, the former proceeds to say that "the defendant, with force and arms, and with great force and violence, seized, laid hold of, pulled, plucked, and tore, and with his fists gave and struck a great many violent blows and strokes on and about divers parts of the plaintiff's nose." If Jones has been given into custody by Smith, without sufficient reason, and Jones brings an action for false imprisonment, instead of saying "he was compelled to go to a station-house," he declares that the defendant, "with force and arms, seized, laid hold of, and with great violence pulled and dragged, and gave and struck a great many violent blows and strokes, and forced and compelled him, the plaintiff, to go in and along divers public streets and highways, to a police office; whereby the plaintiff was not only greatly hurt, bruised, and wounded, but was also kept."

If Snooks's dog bites Thomson's pet lamb,

Snooks declares, "that defendant did wilfully and injuriously keep a certain dog, he, the defendant well knowing that the said dog was and continued to be fierce and mad, and accustomed to attack, bite, injure, hurt, chase, worry, harass, tear, agitate, wound, lacerate, snap at, and kill sheep and lambs; and that the said dog afterward, to wit, on the day of , and divers other days, did attack (etc. etc. down to) and kill one hundred sheep and one hundred lambs of the plaintiff, whereby the said sheep and the said lambs (it will be remembered there was only one lamb) were greatly terrified, damaged, injured, hurt, deteriorated, frightened, depreciated, floored, flustered, and flabbergasted, to the damage of the plaintiff of £ , and therefore he brings his suit."

The various forms of declaration are so numerous, that they fill a volume of seven hundred large pages of Chitty, who is quite chatty on this dry subject, so much does he find to say with regard to it. To this able and amusing writer we refer those who are curious to know how a schoolmaster may declare for "work and labor, care, diligence, and attendance of himself, his ushers and teachers, there performed and bestowed in and about the teaching, instructing, boarding, educating, lodging, flogging, enlightening, thrashing, washing, whipping, and otherwise soundly improving, divers infants and persons." These, and almost

all other conceivable causes of action, are dealt with fully in the pages to which we allude; and all therefore who wish the treat of going to law are referred to the treatise alluded to.

MR. JUSTICE MAULE was noted for splitting straws on the bench, an instance of which is related in connection with special demurrers. A man was described in a plea as "I. Jones;" and the pleader, probably not knowing his name, referred in another part of the plea to "I" as an initial. The judge said that there was no reason why a man might not be christened "I" as well as Isaac, inasmuch as either could be pronounced alone. The counsel for the plaintiff then objected that the plea admitted that "I" was not a name by describing it as an initial. "Yes," retorted the judge; "but it does not aver that it is not a *final* as well as an *initial* letter."

VICE-CHANCELLOR BACON thus discoursed of "the sublime mysteries of special pleading," "the days of which are numbered," said he. "For probably in less than a year we shall only think of them as the phantoms of the past fabulous ages."[1]

[1] Job v. Potton, 23 W.R. 590; L.R. 20 Eq. 94.

IN North's Life of Lord Guilford[1] is this account of the preface to Pollexfen's Reports: "By way of remark to show how faction will get the better of common sense and truth, even in men great pretenders to both, I must add that Polléxfen, an arguer for Sir Samuel Barnardiston, since the Revolution, published (or fitted for the press) a book of reports, as they are called, consisting chiefly of his factious arguments; and particularly in this case [Barnardiston v. Soame]; but most brazenly and untruly in his preface, tells how 'he had carried the cause, if the Lord Chief Justice North had not solicited the judges to give a contrary judgment' — or to that effect. This book and preface was shown to the then Lord Chief Justice Holt, who did a singular piece of justice to his lordship's memory and honor; for he sent for the bookseller to answer it before him, and had suppressed the book, if he had not promised to change the preface, and leave out that scandal — which was done; but some copies had escaped before."

LORD HALE doubts whether voluntarily and maliciously infecting a person of the plague, and so causing his death, would be murder. It is hard to see why. He says that "infection is God's arrow." — 1 Hale P. C. 432.

[1] Vol. I. p. 110, ed. 1826.

DURING the legal absence of Mr. (afterwards Lord) Campbell on his matrimonial trip with the ci-devant Miss Scarlett, Mr. Justice Abbott observed, when a cause was called on in the Court of King's Bench, "I thought, Mr. Brougham, that Mr. Campbell was in the case." — "Yes, my lord," replied Mr. Brougham, with that sarcastic look peculiarly his own; "he was, my lord; but I understand he is ill."— "I am very sorry to hear that," said the judge. "My lord," replied Mr. Brougham, "it is whispered that the cause of my learned friend's absence is the *scarlet fever*."

IT seems that any person is liable to be committed to prison for his lifetime by the Court of Chancery, as guilty of contempt of court, for not paying that which he has not to pay, and for not doing other impossibilities. What a number of people might be committed for contempt of the Court of Chancery if we all expressed our feelings!

LORD BACON writes of "inconsistency of judgments:" "If it be that previous decisions must be rescinded, at least let them be interred with honor."[1]

[1] De Augmentis, Lib. VIII. aph. 95. Judicia enim reddita, si forte rescindi necesse sit, saltem sepeliuntor cum honore.

ABOUT the year 1803 Lord Eldon, C., directed an issue to be tried in a court of law for the purpose of having the parties themselves examined in respect of certain transactions in a bankruptcy suit. Mr. (afterwards Lord) Erskine was retained for the plaintiff, who had large pecuniary interests at stake, and Mr. (afterwards Baron) Garrow for the defendant. The plaintiff was called in to the consultation, and, on his entrance, Mr. Erskine sternly addressed to him the following words: "Sir, if you do not wish to go to hell, you must withdraw your record!" It was withdrawn forthwith.[1]

LORD ERSKINE, in a letter to Lord Stowell, in 1821, relating to a judgment of the latter in the Court of Admiralty in a case of collision at sea, thus speaks of Lord Kenyon: —

"I remember my excellent friend, the late Lord Kenyon, one of the best and ablest judges and the soundest lawyer, in trying a cause at Guildhall, seemed disposed to leave it to the jury whether the party who suffered might not have saved himself by going on the wrong side of the road, where the witnesses swore that ample room was left. The answer to which is the dangerous uncertainty

[1] This anecdote was related to the late Mr. Samuel Warren by a friend who was professionally concerned in the cause. Warren Law Studies, II. 417 note, 3d ed.

of such an attempt, destructive of all the presumptions of conduct founded upon law. Observing that Lord Kenyon was entangled with this distinction, from his observations in the course of the evidence, I said to the jury, in stating the defendant's case: "Gentlemen, if the noble and learned judge, in giving you hereafter his advice and opinion, shall depart from the only principle of safety (unless where collisions are selfish and malicious) and you shall act upon it, I can only say that I shall feel the same confidence in his lordship's general learning and justice, and shall continue to delight, as I always have delighted, in attending his administration of justice; *but I pray God that I may never meet him on the road.*" Lord Kenyon laughed, and the jury along with him; and when he came to sum up he abandoned the distinction, saying to the jury that he believed it to be the best course *stare super antiquas vias.*[1]

IN a recent case, the Supreme Court of the United States animadvert upon the practice of introducing children as witnesses in an angry family quarrel, Mr. Justice Wayne quaintly saying that "it cannot be done without its being considered as a forlorn effort of parental obliquity."[2]

[1] Life of Lord Kenyon p. 345.

[2] Toby v. Leonards, 2 Wallace, 438.

NO better statement of the use of Abridgments has been given than that contained in "Studii Legalis Ratio," p. 119, A.D. 1675: "As for the Abridgments, though they are of great use as Lord Coke saith Compendia sunt dispendia. Abridgments in some cases mistaking the state and truth of the question, and sometimes the right reason and rule of the case, are utterly mistaken. Therefore Satius est petere fontes quam sectari rivulos. it is better and safer sailing in the main sea than in rocky havens. When the whole case is set down at large, with all the circumstances and reasons of either side, the point in question is easily apprehended, and many rules of law collected by inference, which out of an abridged case cannot be done."

NIHIL quod est inconveniens est licitum is a legal maxim; that is, in the language of a learned lawyer, "it is better that damage should be incurred than that injustice should be perpetrated;" for so he interprets the literal maxim, "The law will sooner suffer a mischief than an *inconvenience*."[1] The substance of the matter is that the law will tolerate the existence of a particular, rather than establish a general, injustice: since Salus populi, suprema lex.

[1] Davis v. Waddington 7 M. & G. 41 note by Sergeant Manning.

MR. JUSTICE COLERIDGE, in the maintenance of the principle that even to the representatives of the people, the House of Commons, the most powerful body in the nation, the calumny of its individuals is forbidden, said: "I soberly ask the warmest advocate for this extended privilege, whether any benefit in a land all the institutions of which seek the genial sunshine of public opinion, and must languish without it, can make up for the injury resulting from this, that it should be capable of being said with truth the House of Commons *has become a trader in books, and claims as privilege a legal monopoly in slander.*"[1]

THE old notion that a corporation, "having no soul," was incapable of malicious intentions, was recently disregarded as "quaint" and unsubstantial; and it was held, that, in case of a wilful and intentional wrong, an action of tort is maintainable against a corporation where the act complained of is within the purpose of the incorporation, and it has been done in such a manner as that it would constitute an actionable wrong if done by a private individual.[2]

[1] Judgment in Stockdale v. Hansard, 2 P. & D. 218; 9 A. & E. 243.

[2] Green v. London General Omnibus Co. 29 L. J. N. S. 13 C. P.

"THE Common Law jurisdiction," says, in glowing terms, an able writer on Equity, "is cribbed and confined in its operation in respect of fraud, and does not penetrate beyond the surface; while Equity extends its relief to meet almost every variety of legal subterfuge in all its windings and ramifications, and tracks a covinous defendant into the profoundest recesses of his lair." [1]

"TO beguile the Court, or the party . . . is an artificial deceit, of all others the worst; for hereby the matter is so tricked, shadowed, and heightened by color of painted art as thereby the judges themselves are abused and beguiled." — 2 Inst. 215.

IN the case of The King v. The Warden of the Fleet, 12 Mod. 340, it was objected to a witness that he had been convicted of common barratry, and a record of his conviction was produced, which showed that he had been fined one hundred pounds. Holt, C. J., said: "If he had had the handling of him, he had not escaped the pillory, and that he remembered Sergeant Maynard used to say it were better for the country to be rid of one barrator than of twenty highwaymen."

[1] Smith Eq. 159.

HERE is an instance of Lord Lyndhurst's good nature. When Cleave the newsvender was tried in the Court of Exchequer on a government information, he conducted his own case, and was treated with much indulgence by Lord Lyndhurst the judge. Cleave began his defence by observing that he was afraid he should, before he sat down, give some rather awkward illustrations of the truth of the adage that "he who acts as his own counsel has a fool for his client."—"Ah, Mr. Cleave," said his lordship with great pleasantry, "ah, Mr. Cleave, don't you mind that adage: it was framed by the *lawyers*."

"A CURSORY and tumultory reading," says Lord Coke, "doth ever make a confused memory, a troubled utterance, and an uncertain judgment."[1] The acquisition of learning will serve but little purpose, unless it be permanently and serviceably *retained*. "What booteth it to read *much*," asks old Philipps, "which is a weariness to the flesh; to meditate often, which is a burthen to the mind; to learn daily with increase of knowledge; when he is to seek for what he hath learned, and perhaps, then especially, when he hath most need thereof? Without this, our studies are but lost labor."[2]

[1] 6 Rep. Preface. [2] Studii Legalis Ratio, 15, A.D. 1675.

IN Lord Campbell's account of the Oxford circuit, A.D. 1810, are the following sketches:[1]—

"The man of highest rank upon the circuit was Williams, a king's sergeant, the editor of 'Saunders.' Although a very learned man, he was a poor advocate, and was never employed except in *Grimgribber* cases, depending on the law of real property. In one of these a question arose respecting the operation of a *recovery;* and the sergeant laid down a position which Mr. Justice Lawrence, a most learned judge, doubted. But instead of reasoning, or citing cases to support it, the learned sergeant only said, 'I assure you, my lord, it is so, — upon my honor it is so;' and Lawrence yielded to the authority.

"The first in junior business was Abbott, afterwards Chief Justice of England. He was then of no mark or likelihood, or supposed to be capable of being more than a puisne judge, an appointment to which he had a kind of prescriptive claim, from having been long 'Chief Devil to the Attorney General,' or 'Counsel to the Treasury,' and having drawn the indictments for high treason against Hardy, Tooke, and Thelwall. He was the very worst hand at addressing a jury I ever knew to attempt it. He was fully aware of this defect, and only hazarded the effort with great reluctance in the absence of his leader, or when,

[1] Life of Lord Campbell, vol. I. pp. 249-251.

all the silk gowns being retained on the same side, they were forced to give him a leading brief on the other. I remember one such occasion, on the trial of a great quo warranto cause, when he had spoken near two hours, and was about to sit down, a barrister present, who thought he was all the time, in his usual vocation of junior, making a formal statement of the questions to be tried, preparatory to the speech of the leader, exclaimed in my ear, 'What a monstrous time Abbott is in this case in opening the pleadings!' But his powers expanded as he was elevated, and he became one of the best judges who ever presided in the Court of King's Bench, not only laying down the law with precision and accuracy, but enforcing his opinion with copiousness of illustration, and elegance of diction."

IF the dignity of the law is not sustained, its sun is set, never to be lighted up again.[1]

IN Wharton's Case, Yelv. 24, which was an indictment for murder, the jury returned a verdict of not guilty. "Wherefore Popham, Gawdy, and Fenner *fuerunt valde irati*, and all the jurors were committed and fined, and bound to their good behavior," etc.

[1] Per Lord Erskine in Burdett v. Abbott, 5 Dow, 202.

THE most trifling and ridiculous civil injuries to members of the House of Commons, even trespasses committed upon their servants, though on occasions unconnected with the discharge of any parliamentary duty, have been repeatedly the subject of inquiry under the head of privilege. But there is one instance of abuse which goes further than all the rest. A member's servant was committed as the father of a bastard: the House of Commons held he was entitled to privilege of Parliament, and a discussion ensued whether he or the constable was to pay the costs.

The instance of a citizen being committed by the House of Lords for calling the badge of a swan on a nobleman's waterman a goose, is well known.[1]

"THERE is no calling witnesses without facts; there is no making a defence without innocence; there is no answering evidence which is true."[2]

"ONE book," says Phillips, "well digested, is better than ten hastily slumbered over." — Studii Legalis Ratio, p. 188.

[1] Cited in the argument in Stockdale v. Hansard, 2 P. & D. 103.

[2] Lord Mansfield, arg. when Solicitor General, in the proceedings against Lord Lovat for treason, 18 Howell State Trials, 812, A.D. 1746.

"WHEN a learned man dies," said the Master of the Temple, at the grave of the great jurisconsult, John Selden, in 1654, in the Temple Church, — "when a learned man dies, much learning dies with him;" adding, "If learning could have kept a man alive, our brother had not died."[1]

SAT cito, si sat bene. "Quick enough, if safe enough." This motto was a favorite maxim with Lord Eldon, who says, "In all I have had to do in future life, professional and judicial, I have always felt the effect of this early admonition, on the panels of the vehicle which conveyed me from school, 'Sat cito, si sat bene.'"[2]

THE KING v. DANGERFIELD.[3] The defendant was convicted of publishing a libel, wherein he had accused the King, when Duke of York, that he had hired him to kill the late King Charles, etc. And on Friday, June 20, 1685, he was brought to the bar, where he received this sentence, viz. That he should pay a fine of five hundred pounds; that he should stand twice in

[1] Wood Athenæ Oxonienses, vol. II. p. 134. Fol. London: 1721.

[2] Twiss, Life of Lord Eldon, vol. I. pp. 34, 35, Amer. ed.

[3] 3 Mod. 68.

the pillory, and go about the Hall with a paper in his hat signifying his crime; that on Thursday next he should be whipped from Aldgate to Newgate, and on Saturday following from Newgate to Tyburn; which sentence was executed accordingly.

As he was returning in a coach on Saturday from Tyburn, one Mr. Robert Frances, a barrister of Gray's Inn, asked him in a jeering manner whether he had run his heat that day. He replied to him in scurrilous words. Whereupon Mr. Frances run him in the eye with a small cane which he had then in his hand, of which wound the said Mr. Dangerfield died on the Monday following. Mr. Frances was indicted for this murder; and, upon not guilty pleaded, was tried at the Old Bailey, and found guilty, and executed at Tyburn on Friday, July the 24th, in the same year.

A NOTEWORTHY observation fell judicially from Lord Eldon: "Upon that occasion Lord Chief Justice De Grey, in his most luminous judgment said, he never liked Equity so well as *when it was like Law.* The day before, I had heard Lord Mansfield say he never liked Law so well as when it was like Equity: remarkable sayings of these two great men, which made a strong impression on my memory." [1]

[1] Lord Dursley v. Fitzhardinge Berkeley, 6 Ves. 260.

THE following story is told as illustrative of the law's delay. When the first cargo of ice was imported into England from Norway, there not being such an article in the custom-house schedules, application was made to the Treasury and to the Board of Trade: after some delay it was decided that the ice should be entered as "*dry* goods;" but the whole load had melted before the cargo was cleared.

TO prevent men thinking and acting for themselves by restraints on the press is like the exploit of that gallant man who thought to pound up the crows by shutting his park gate.[1]

"IF even quibbling is at any time justifiable, certainly a man may quibble for his life," said Chief Justice Parsons in a capital case.[2]

WHEN Lord Eldon introduced his bill for restraining the liberty of the press, a member moved as an additional clause, that all anonymous works should have the name of the author printed on the titlepage.

[1] Milton, Areopagitica, ll. 11-14.
[2] Commonwealth v. Hardy, 2 Mass. 316.

THE quaint reason given by Bracton, and adopted by Lord Coke, why, by the common law, a father cannot inherit real estate by descent from his son, is, that inheritances are heavy, and descend, as it were, by the laws of gravitation, and cannot re-ascend.[1]

BARON SNIGGE, with reference to the distinction between the actions of trespass and trespass on the case, thus defines the duty of the pleader: "An action of trespass lieth generally; but in an action on the case he *ought to hit the bird in the eye.*"[2]

"But notwithstanding, if there is an irregularity in the proceedings of the plaintiff, and the plaintiff insists upon the strict default of the defendant, as the courts of law say, it is very necessary a person insisting upon the rigor *should hit the bird in the eye.*"[3]

LORD BROUGHAM informs us that it was to stop Sir Samuel Romilly's menaced innovation of subjecting men's real property to the payment of all their debts that the phrase "the wisdom of our ancestors" was first used by that great Equity Judge, Sir William Grant, and by Mr. Canning.

[1] Co. Litt. 11. 2 Bl. Comm. 212.
[2] Levison v. Kirk, Lane, 67.
[3] Per Lord Hardwicke in Floyd v. Nangle, 3 Atk. 569.

"I TOLD Sir Edward Sugden," writes Lord Campbell "(what he had not heard before) Baron Alderson's joke, — that the collection of his decisions during his first chancellorship, which was not much longer than mine, instead of 'Reports *tempore* Sugden,' should be 'Reports *momento* Sugden.'"[1]

"THE Court of Chancery, while Lord Eldon held the seals, appeared to many a despairing suitor no other than John Bunyan's renowned Doubting Castle itself." — Goldsmith Eq. p. 53.

BONI judicis est ampliare justitiam. "The true text," said Lord Mansfield, "is 'boni judicis est ampliare *justitiam*,' not '*jurisdictionem*,' as it has been often cited."[2]

IN May 1874, a bill to limit the privilege of franking was sent from the Parliament of Ireland for the royal approbation. It contained a clause, that any member, who from illness or other cause should be *unable to write*, might authorize another to frank for him by a *writing under his hand.*

[1] Life of Lord Campbell, vol. II. p. 231.
[2] Rex v. Philips, 1 Burr. 304.

IN the recently published "Life of Lord Campbell," vol. ii. pp. 184–187, is the following interesting account of the trial of O'Connell and of the subsequent proceedings in the House of Lords on the writ of error: —

"O'Connell, who had been allowed to hold meetings for repeal without check for above a twelvemonth, was suddenly prosecuted under a monster indictment, containing an infinite number of counts, which charged him with an infinite variety of offences, and sought to make him personally answerable for all that had been done, written, or spoken respecting repeal for a long period of time in every part of Ireland.

"This course was most unfair and most unwise. The mode in which the prosecution was conducted was still more reprehensible. A packed jury was impanelled, from which all Roman Catholics were excluded; and the Chief Justice, Pennefather, for the purpose of obtaining a conviction, was guilty of such gross partiality, that the counsel for the Crown and the Ministers in England were scandalized, and could not say a word in his defence. Upon several of the most important counts the jury found a verdict in words which the Court in Dublin thought amounted to *Guilty*, but which were clearly an insufficient finding. On all the other counts, several of which afterwards turned out to be bad in point of law, they found a general

verdict of *Guilty;* and upon the whole record the Court, 'for the offences aforesaid,' passed a heavy sentence of fine and imprisonment.

"Soon after the meeting of Parliament, the Marquis of Normanby brought the subject before the House of Lords by a motion on the state of Ireland. . . . The next proceeding connected with O'Connell's case was a bill I introduced to allow bail in error in cases of misdemeanor. I pointed out the monstrous injustice of hearing the merits of a conviction after the sentence had been carried into execution, introducing the well-known quotation: —

> 'Gnossius hic Rhadamanthus habet durissima regna
> Castigatque, audique dolos.'[1]

"But Lyndhurst made a strong speech against the bill, and it was thrown out. In the following session he highly praised it, and it passed.

"When the writ of error came to be argued, O'Connell lying in prison in Dublin, the most intense interest was excited, and the eyes of all Europe were upon us.

"The main question was whether, there being in the indictment good counts on which there was a regular verdict of *Guilty*, the judgment sentencing the defendant to a discretionary fine and imprisonment could be supported, there being bad

[1] He first inflicts the punishment, and then he hears the writ of error.

counts in the indictment, and good counts without a regular verdict of *Guilty* upon them, the sentence purporting to be pronounced in respect of all the offences mentioned in the indictment. There was likewise a serious objection to the formation of the jury, which was raised by a plea in abatement.

"The Crown lawyers contended that we must presume that the Irish judges knew which *counts* were good, as well as which *findings* were good and which defective, so that the whole punishment awarded must be taken to be for the offences in the good counts on which there was a regular verdict of *Guilty.* This certainly would have been a presumption of law entirely against *truth*, for the Irish judges thought all the counts in the indictment good, and particularly relied upon several which all the English judges thought bad; and the Irish judges had denied that there was any insufficiency in the findings of the jury. In truth, the supposed presumption was contrary to all principle, and was unsupported by any authority; the saying that 'it is enough if there be one good count in an indictment' applying to a motion in arrest of judgment before sentence, and not to a writ of error after sentence.

"All the English judges, however, except two, were for overruling all the objections. The two dissentients (Parke and Coltman) thought that

the judgment ought to be reversed, as credit must be given to the averment in the record, that the punishment was awarded for *all* the supposed offences enumerated in the indictment, whereas some of these were not indictable, and of others the defendant had not been lawfully found guilty.

"Of the law lords in the House two were now Tories, — Lyndhurst and Brougham; and three were steady Whigs, — Denman, Cottenham, and Campbell. It did so happen by some strange chance that the two were for affirming the judgment, and the three were for reversing it. We delivered written opinions. I took immense pains with mine, which may be seen in Clark and Finnelly's Reports, vol. XI. p. 403.[1]

"Were the lay lords to vote, although they had not been present at the argument of the case, and were incapable of understanding it? There were present a large number of ministerialists, who, when the question was put 'that the judgment be reversed,' hallooed out, 'Not content,' and who, if they had divided, would have constituted a large majority for *affirming*. But the Government was afraid of the effect to be produced in Ireland by an affirmance so obtained; and Lord Wharncliffe, the president of the Council, strongly advised that the lay lords should not vote. I said that the

[1] Lord Campbell's admirable judgment on this branch of the law of Criminal Pleading has always been regarded by the profession as eminently clear and conclusive.

Constitution knew no distinction between lay lords and law lords, but that there was in reason a distinction between lords who had heard the case argued, and those who had not, and that, if any of the latter class should vote, the decision would bring great disgrace upon the administration of justice in that House. The lay lords then all withdrew; and the question being again put, we five law lords alone being in the House, Denman, Cottenham, and Campbell said, *Content*, and Lyndhurst and Brougham said, *Not content*, when, without a division, Lyndhurst said, 'The contents have it.' So the judgment was reversed, and O'Connell was liberated.[1]

"Brougham immediately came up to me and said, 'Well, you have made Tindal a peer. The Government will not endure a majority of Radical law lords in the House.' Nevertheless poor Tindal died a commoner.

"I never gave a more conscientious vote. There was an awkwardness in going against a large majority of the English judges in a political case; but our judgment was generally approved of in Westminster Hall."

[1] Lord Brougham, as reported by the authorized reporters of the House of Lords, spoke of it as "a decision which will go forth without authority, and come back without respect." 11 Clark & Finnelly, p. 423. "He was actually in a furious rage," writes Lord Campbell, Life of Lord Brougham, p. 531.

THE following is one of the head-notes to a case reported in the second volume of Paige's Chancery Reports, p. 438: "A receiver cannot be appointed to deprive the defendant of the possession of his property, *ex parte*, without giving him an opportunity to be heard in relation to his rights, except in very special cases, as where he is out of the jurisdiction of the Court."

LORD CAMPBELL, with the prospect of being appointed Chief Justice of the Queen's Bench, under date October 14, A.D. 1849, writes:[1] —

"Meanwhile I have again taken to my favorite Co. Litt. It certainly is very pleasant reading. I am more than ever struck by its unmethodical and rambling character. But one must admire the author's stupendous familiarity with all parts of the Law of England: he is uniformly perspicuous, he gives amusing glimpses of history and manners, and his etymologies and other quaint absurdities are as good for a laugh as Joe Miller or Punch.

"Littleton's book by itself is a most exquisite production. Its plan is perfect for giving a systematic outline of the law of Real Property in this kingdom in the reign of Edward IV. and all its details are most masterly. But Lord Coke's example ruined juridical composition in England.

[1] Life of Lord Campbell, II. pp. 261, 262.

Blackstone even has not been able to correct our taste; and the repertory of Common Law learning at present most frequently referred to is the trebly annotated edition of Saunders's Reports, by Sergeant Williams, Mr. Justice Patteson, and Vaughan Williams. In law-books we are not only greatly excelled by the French and by the Scotch, but even by the Americans.

"*October 15.* — Having been trying to find a motto for my rings when I am called Sergeant. Nothing better turns up than 'Justitiæ tenax.' — Juv. Sat. viii. 25."

CARDINAL WOLSEY is, perhaps, the most notable person ever placed in the stocks. It is recorded, that at the time he was incumbent at Lymington, near Yeovil, during the village feast, he had made too free with the glass; and the condition of the minister coming under the notice of Sir Amias Paulet, a strict moralist, he ordered him to be put in the stocks, which was accordingly done.

"LORD CHIEF JUSTICE GIBBS used to say that he could get authorities in the Year Books for any side in any thing," said Lord Lyndhurst, Lord Chancellor, in the course of the argument of a celebrated case in the House of Lords.[1]

[1] Gray v. The Queen, 11 Clark & Finnelly, 441.

THE Court of Common Pleas, so late as the 5 W. & M., held that a man might have a property in a negro boy, and might bring an action of trover for him, *because negroes are heathens.*[1] "A strange principle to found a right of property upon!" exclaims Christian.[2]

LORD BACON, in his paper on the "Amendment of the Common Law," wrote: "Great judges are unfit persons to be reporters; for they have either too little leisure or too much authority, as may appear well by those two books, whereof that of my Lord Dyer is but a kind of note-book, and those of my Lord Coke hold too much de proprio."[3]

"LET one devil torment the other," said my Lord Keeper Egerton to a question asked him, what should become of the broker. Both broker and usurer had conspired to cot in a young gentleman.

IN a bill for pulling down the old Newgate in Dublin, and rebuilding it on the same spot, it was enacted that the prisoners should *remain in the old jail till the new one was completed.*

[1] Ld. Raym. 147. [2] 1 Bl. Comm. 425 note.
[3] Bacon's Letters and Life, vol. V. p. 86, ed. Spedding.

WE suggest the following terse description of "The two Supream Laws of the Realm," found in "The Practice Unfolded" of the High Court of Chancery, p. 53, ed. 1672, to the publishers of the next edition of "Bleak House,"—"The Princes of this Land to the imitation of that heavenly representation have appointed two supreme seats of Government within this Land: the one of Justice, wherein nothing but the strict letter of the Law is observed; and the other of Mercy, which in the rigor of the Law is tempered with the sweetness of Equity, the which is nothing but Mercy qualifying the rigor of Justice."[1]

IN some of the cases brought against Lord Bacon implying corruption, the sums of money received by him were not gifts at all, but money borrowed, and recoverable as debts. Three of these cases gave rise, after Bacon's death, to a curious question. Being claimed by the lenders as *debts* due to them from the estate, the executors pleaded that they had been decided by the House of Lords to be *bribes*.[1]

[1] The object of the science of equity is "the amelioration of the law in that wherein by reason of its universality it is deficient." Mr. H. B. Wallace's Preface to White and Tudor's Lead. Cas. in Equity, quoted in Rawle on Equity, p. 92.

[1] Bacon, Works, XIV. 264, ed. Ellis & Spedding.

BY the Constitution of the Commonwealth of Massachusetts the office of justice of the peace is a judicial office, and must be exercised in person; and a woman, whether married or unmarried, cannot be appointed to such an office.[1]

In England the Court of Common Pleas have recently decided that women are subject to a legal incapacity from voting at the election of members of Parliament; and that the word "man" in the statute is used in contradistinction to "woman." Mr. Justice Byles observed: "Women for centuries have always been considered legally incapable of voting for members of Parliament; as much so as of being themselves elected to serve as members. . . . In addition to this, we have the unanimous decision of the Scotch judges.[2] I trust their unanimous decision and our unanimous decision will forever exorcise and lay this ghost of a doubt, which ought never to have made its appearance."[3]

LORD BACON says, that "the nature of Justice distributive is to consider not only de toto, but de tanto, and not to pronounce sentence by ounces and drachms, but by grains."

[1] Opinion of the Justices, 107 Mass. 604. But she may be a member of a school committee. It is a local office of an administrative character. Opinion of the Justices, 115 Mass. 602.

[2] Brown v. Ingram, 7 Court of Sess. Cases, 3d ser. 281.

[3] Chorlton v. Lings, L. R. 4 C. P. 374, 394, A.D. 1868.

THE Court set aside the verdict as perverse, and granted a new trial, where an Irish jury had found that a hunter was "necessary" for a mere boy, who, having bragged at a ball that he was a member of the Surrey Stag Hunt, and worth six hundred pounds a year, had induced an Irishman to sell him his horse for a hundred and fifty pounds, had hunted the animal through the season, and had then, when payment was demanded, set up, through his guardian, what was described by an indignant advocate as "the shabby defence of infancy."[1]

THE following is a terse statement of an universal rule of civil and criminal pleading: "Good matter must be pleaded in good form, in apt time, and in due order, or otherwise great advantage may be lost." — Co. Litt. 303 a.

A WRIT of Mandamus is a high prerogative writ which has been said to be "peculiar to the Court of Queen's Bench, and one of the flowers of it,"[2] — a definition which throws very little light upon the question as to the occasions that will require or justify its issue.[3]

[1] Skrine v. Gordon, I. R. 9 C. L. 479.

[2] Awdeley v. Joye, Popham, 176. It has also been styled festinum remedium. 1 Strange, 549.

[3] 101 Mass. 405.

IN ancient times in Greece, and in later times at Athens, the duty of prosecuting for murder devolved upon the relations of the murdered man;[1] and even in England a last relic of the doctrine that homicide was a private wrong, viz. the Appeal of Murder and Wager of Battle, though long obsolete, was acknowledged by the law[2] until abolished by statute 59 Geo. III. ch. 46.

READERS of the entertaining work, "Boswell's Life of Johnson," will remember how the burly old doctor, in answer to a remark made by the celebrated Quaker lady, Mrs. Knowles, said, "Madam, we have different modes of restraining evil, — stocks for the men, a ducking-stool for women, and a pound for beasts."

"A POPULAR judge is a deformed thing; and *plaudite's* are fitter for players than for magistrates. Do good to the people, love them, and give them justice. But let it be, as the Psalm saith, nihil inde expectantes; looking for nothing, neither praise nor profit."[3]

[1] Demosthenes I. 411 note, ed. Whiston.

[2] Ashford v. Thornton, 1 B. & A. 405, A.D. 1818.

[3] Lord Bacon's Speech in the Star Chamber, before the Summer Circuits, A.D. 1617. Letters and Life, VI. p. 211, ed. Spedding.

DURING all the time Coke's Reports were publishing, and for twenty-two years afterwards, no other Reports were printed. "It became all the rest of the lawyers to be silent whilst their oracle was speaking."[1] Sir Henry Hobart alone, his immediate successor in the Common Pleas, made a collection, which was published sixteen years after his death, and, though unskilfully edited, was commended by Sir Heneage Finch, who published a corrected edition, as "beautiful even in confusion."

THE form of judgment for punishment by the pillory was that the "defendant should be set *in* and *upon* the pillory." We find particulars of a case which occurred in 1759, when the undersheriff of Middlesex was fined fifty pounds and imprisoned for two months, by the Court of King's Bench, because, in executing the sentence upon Dr. Shebbeare, who had been convicted of a political libel, he had allowed him to be attended upon the platform by a servant in livery, holding an umbrella over his head, and to stand without having his neck and arms confined *in* the pillory.

TO the law and to the testimony. — ISAIAH viii. 20.

[1] Preface to 5 Mod.

MR. W. H. DAWSON of the "Craven Pioneer" tells us the ducking-stool in bygone days was used in Craven. He says: "A ducking-pond existed at Kirkby, although it has not been used within the memory of any living person. Scolds of both sexes were punished by being 'ducked:' indeed, in the last observance of the custom, a tailor and his wife were 'ducked' together before the view of a large gathering of people. The husband had applied for his wife to undergo the punishment on account of her quarrelsome nature; but the magistrate decided that one was not better than the other, and he ordered a joint punishment. Back to back, therefore, husband and wife were chained, and dropped into the cold water of the pond. Whether it was in remembrance of this old observance, or not, cannot be definitely said; but it is nevertheless a fact, that in East Lancashire, in the Spring of 1880, a man who had committed some violation of morals was forcibly taken by a mob, and dragged several times through a pond until he had expressed penitence for his act."

TRANSIT in rem judicatam. This maxim has thus been tersely rendered: "The cause of action is changed into matter of record, which is of a higher nature; and the inferior remedy is merged in the higher."[1]

[1] Per Parke, B. in King v. Hoare, 13 M. & W. 504.

THE following anecdotes of Lord Abinger are taken from his Life pp. 193–195: —

"I have it on Lord Chelmsford's authority, that the Duke of Wellington said of my father: 'When Scarlett is addressing a jury, there are thirteen jurymen.' This is both characteristic of the influence he exercised when addressing juries, and of the Duke's terse manner of expressing himself.

"Mr. Justice Patteson related the following story of my father's dexterity in the conduct of a cause; the ends of justice being attained by a theatrical display of incredulity which deceived both Brougham and Parke, the counsel on the other side. My father, with Patteson as junior counsel, was for the defendant. He told Patteson that he would manage to make Brougham produce in evidence a written instrument the withholding of which, on account of the insufficiency of the stamp, was essential for the success of his case. That on Patteson observing, that, even if he could throw Brougham off his guard, he would not be so successful with Parke, my father answered that he would try. And he then conducted the case with such consummate dexterity, pretending to disbelieve the existence of the document referred to, that Brougham and Parke resolved to produce it, not being aware that my father had any suspicion of its invalidity. Patteson described the air of extreme surprise and mortification of my father on

its production by Brougham, with a flourish of trumpets about the 'non-existence of which document his learned friend had reckoned on so confidently.' Patteson went on to say that the way in which my father asked to look at the instrument, and his assumed astonishment at the discovery of the insufficiency of the stamp, were a masterpiece of acting.

"On one occasion an action was brought for the abatement of a nuisance, and Mr. Scarlett was employed for the defence. He began his cross-examination of a lady, the plaintiff's witness, by inquiring tenderly about her domestic relations, her children, their illnesses. The lady became confidential, and appeared flattered by the kind interest taken in her. The judge interfered, with a remark about the irrelevancy of this. Mr. Scarlett begged to be allowed to proceed; and on the conclusion of the cross-examination, he said: 'My Lord, that is my case.' He had shown on the witness's testimony that she had brought up a numerous and healthy progeny in the vicinity of the alleged nuisance. The jury, amused as well as convinced, gave a verdict for the defendant.

"Sir Walter Scott promised a friend that he would write a book for his benefit. The friend died before the promise was fulfilled, and his executors insisted that Sir Walter should write a book for the benefit of the widow and children of

the deceased. This Sir Walter refused to do. The executors sought the advice of Mr. Scarlett, who, having listened to their case, said: 'Let us suppose the position to be reversed: if Sir Walter Scott had died, should you have required his executors to write a book for the benefit of your clients?'—'Oh, no!' exclaimed the executors, convinced at once that they had no case against Sir Walter Scott."

IN an old case a man stole his wife against her friends' consent, and sued them for her portion in the Court of Chancery, but was refused relief on the ground, as it was quaintly stated by Sir Thomas Egerton, that "he who steals flesh, let him provide bread how he can."

BARON BRAMWELL once observed: "Every person of any experience in courts of justice knows that a scintilla of evidence against a railway company is enough to secure a verdict for the plaintiff. I was once in a case before a most able judge, the late Chief Justice Jervis, in which I was beaten, I dare say rightly, in consequence of an observation of his: 'Nothing is so easy as to be wise after the event.'"[1]

[1] Cornman v. Eastern Counties Railway Co. 5 Jur. N. S. 658.

THE head-note to Blackman v. Bainton, 15 C. B. N. S. 432, is quaint: "Twenty-five witnesses and a horse on one side against ten witnesses on the other. Held, not such a preponderance of 'inconvenience' as to induce the Court to bring back the venue from the place where the cause of action (if any) arose."

LORD BACON, in the Advancement of Learning, II. 20, § 8,[1] approves of condensing argument into brief and acute sentences, and gives these as examples: —

PRO VERBIS LEGIS.

Non est interpretatio, sed divinatio, quæ recedit a literâ.

Cum receditur a literâ, judex transit in legislatorem.

PRO SENTENTIA LEGIS.

Ex omnibus verbis est eliciendus sensus qui interpretatur singula.[2]

[1] Works, III. p. 413, ed. Ellis & Spedding.

[2] FOR THE WORDS OF THE LAW. — Interpretation which departs from the letter is not interpretation, but divination.

When the letter is departed from, the judge becomes the lawgiver.

FOR THE INTENTION OF THE LAW. — The sense according to which each word is to be interpreted must be collected from all the words together.

DAMISELLA. A light damosel or miss. William Hoppeshort holds half a yard-land, in Bockhampton, County of Berks, of our Lord the King, by the service of keeping for the King six damsels, to wit, whores, at the cost of the King. This was called pimp-tenure.[1]

EPITAPH on Sir John Strange the reporter: —

ON STRANGE, A LAWYER.

Here lies an honest lawyer, and that is *Strange.*

IN a case in which it was held that a bond in consideration of past cohabitation is good in law, Mr. Justice Bathurst "pleased the sanctimonious by enriching his judgment" with quotations from the Books of Exodus (xxii. 16) and Deuteronomy (xxii. 28, 29) to prove, that "wherever it appears that the *man is the seducer*, the bond is good."[2] We wonder when a case will occur in which the question of the validity of the bond, the woman being the seducer, shall be solemnly adjudged and reported.

[1] Cunningham Law Dict. sub voce, Damisella. Jacob Law Dict. sub voce, Pimp-Tenure. Blount, Tenures, pp. 29, 30, ed. Hazlitt.

[2] Turner, spinster v. Vaughan, 2 Wils. 339.

"LET this action," said Lord Ellenborough, when Sir William Scott was sued for illegally excommunicating one Beaurain, whose animosity he had endeavored to stifle by a gift, — "Let this action be a lesson for all men to stand boldly forward, — to stand on their characters, — and not, by compromising a present difficulty, to accumulate imputations on their honor." [1]

## CURIOUS SPECIMEN OF VIVA VOCE PLEADINGS IN THE ENGLISH COURTS IN THE REIGN OF EDWARD II.[2]

THE case was this: Aleyne de Newton brought his writ of annuity against the Abbot of Burton-upon-Trent, and demanded thirty pounds arrears of an annual rent of forty-five pounds, and he declared that one John, Abbot of Burton, and predecessor of the present abbot, did, by assent of the convent, grant an annuity to Aleyne, payable twice in the year, till he was advanced to a convenable benefice; and he exhibited a specialty containing that the abbot, by assent, etc., did grant an annuity to Aleyne de Newton, Clerk, in the above manner, as he had declared. Upon this, Willuby (as counsel for the defendant) prayed judgment of the writ, because of the variance be-

[1] Life of Lord Eldon by Twiss, vol. II. pp. 233-235, 2d ed.

[2] Reeves Hist. Eng. Law, vol. II. pp. 347-349, 3d ed.

tween the writ and the specialty; for in the writ he was named Aleyne de Newton, but in the specialty Aleyne de Newton, Clerk. Ward said that it was no variance; yet Willuby maintained, that as he might have a writ agreeable to the specialty, if he varied in his own purchase of it, the writ would be ill; but he could in this case have a writ agreeable to his specialty. Ergo, etc. And again, as far as appeared by the specialty, it was made to some one else, and not to the person named in the writ. Stonore, one of the justices, said: "Then you may plead so if you will; but the writ is good:" therefore respondeas ouster.

"Then," said Willuby, "he cannot demand this annuity, because we say that John, our predecessor, on such a day, etc., tendered him the vicarage of, etc., which was void, and in his gift, in the presence of such and such persons, which vicarage he refused: wherefore we do not understand that he can any longer demand this annuity." SHARD. — "We say this vicarage was not worth one hundred shillings: therefore we do not understand it to be a *convenable* benefice, so as to extinguish an annuity of forty pounds." WILLUBY. — "Then you admit that we tendered you the vicarage, and that you refused it?" etc. SHARD. — "As to the tender of a benefice which was not convenable, I have no business to make

any answer at all." Then Mutford, one of the justices, asked what sort of benefice they considered as *convenable*, so as to extinguish the annuity. SHARD. — "We mean one of ten marks at least." Then Stonore said: "Do you admit that the vicarage was not worth one hundred shillings?" WILLUBY. — "We will aver that the vicarage was worth ten marks, prest, etc.; and he has admitted that one of that value should extinguish the annuity." SHARD. — "And we will aver that it was not worth ten marks, *prest*," etc.

After this issue, Willuby was desirous of recurring back to his first plea, and said: "As you declare that the vicarage was not worth one hundred shillings, we will aver that it was worth one hundred shillings," etc. But Stonore interposed, and said: "He declares that the vicarage is worth ten marks; and after that there is nothing to be done, but that the issue should be taken on your declaration or his: now, it seems that it should rather be on yours, for by your plea you make that a convenable benefice which is worth ten marks, and such a declaration you ought to maintain," etc. WILLUBY. — "Then, mention of the value came first from him, when he said it was not worth one hundred shillings; so that it will be sufficient for me to traverse what he had said." But, Stonore pressing him whether he would maintain his plea, Willuby said he would, and accord-

ingly pleaded that the vicarage was worth ten marks, *prest, etc. et alii*, that it was not worth ten marks, *prest, etc.* and so issue was joined.

The pleadings upon the record in the above case must then have stood thus: The defendant said a vicarage had been tendered and refused, and so the annuity should cease, judgment of the action. To this the replication was: The vicarage tendered was not worth ten marks, and so not a convenable benefice to extinguish the annuity: rejoinder, it was worth ten marks: surrejoinder, it was not.

This instance will serve to show the manner of pleading viva voce at the bar: every thing there advanced was treated as a matter only in fieri, which upon discussion and consideration might be amended, or wholly abandoned, and then other matter resorted to, till at length the counsel felt himself on such grounds as he could trust. Where he finally rested his cause, that was the plea which was entered upon the roll, and abideth the judgment of an inquest, or of the Court, according as it was a point of law or of fact.

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THE Irish statute-book opens characteristically with: "An Act that the King's officers may travel *by sea* from one place to another within *the land* of Ireland."

ON the removal of a distinguished counsel from a house in Red Lion Square, an ironmonger became its occupant; and Erskine wrote the following epigram on the change: —

"This house, where once a lawyer dwelt,
Is now a smith's — alas!
How rapidly the iron age
Succeeds the age of brass!"

SYDNEY SMITH, doubting the practicability of introducing trial by jury into New South Wales, imagines a few of the excuses that might be made by any one summoned as a juror. "I cannot come to serve upon the jury: the waters of the Hawksbury are out, and I have a mile to swim. The kangaroos will break into my corn. The convicts have robbed me. My little boy has been bitten by an *ornithorynchus paradoxus*. I have sent a man fifty miles with a sack of flour to buy a pair of breeches for the assizes, and he is not returned."

IN the well-known case of Emans v. Turnbull, 2 Johns. 313, Chief Justice Kent delivered the opinion. In a very recent case in Ireland, Chief Justice May, citing this case, says: "The *Lord* Chancellor Kent in giving judgment," etc.[1]

[1] Brew v. Haren, I. R. 11 C. L. 217, in Exch. Cham. A.D. 1877.

THE following are specimens of Greek wit: —

Philip, in passing sentence on two rogues, ordered one of them to leave Macedonia with all speed, and the other to try and catch him.

Demonax was once heard to say to a lawyer, "Probably all laws are really useless; for good men do not want laws at all, and bad men are made no better by them."

Alcibiades, when about to be tried by his countrymen on a capital charge, absconded, remarking that it was absurd, when a suit lay against a man, to seek to get off, when he might as easily get away.

Socrates used to say the best form of government was that in which the people obey the rulers, and the rulers obey the laws.

It was a saying of Cato the Elder, "Those magistrates who can prevent crime, and do not, in effect encourage it."

Cicero, when one Nepos told him he had caused the death of more by his testimony than he had ever saved by his advocacy, replied, "That is because my credit exceeds my eloquence."

DOUGLAS JERROLD says, "Truth is like gold: a really wise man makes a little of it go a long way."

"AUTHORITIES are the actual decisions of the courts."[1]

"The law is made up of decided cases."[2]

"Decisions of the Courts of Common Law are at one the best expositors and the surest evidence of the common law itself."[3]

"A matter is properly said be adjudged when there can be no appeal."[4]

IN a case in the time of Elizabeth, the plaintiff, for putting in a long replication, was fined ten pounds, and imprisoned, and a hole to be made through the replication, and to go from bar to bar with it hung round his neck.[5]

IF one be in execution, and if he has no goods, he shall live of the charity of others; and if others will give him nothing, let him die in the name of God."[6]

[1] Pollock, C. B. in Dyer v. Best, 35 L. J. Exch. 107. A chain of authorities Milton calls "a paroxysm of citations."

[2] Lord Lyndhurst, L. C. in Lewis v. Bridgman, 2 Clark & Finnelly, 747.

[3] Tindal, C. J. in The Queen v. Millis, 10 Clark & Finnelly, 657.

[4] Jenkins, Cent. Preface.

[5] Milward v. Welden, Tothill, 101.

[6] Montague, Chief Justice, in Dive v. Mannington, 1 Plowd. 68, quoted in M'Lain v. Hayne, 1 Brevard, 296.

IN Mr. Goldwin Smith's sketch of Pitt, it is related that Lord Eldon, at that time Attorney General Sir John Scott, "opened his attempt to procure the capital conviction of a man who he knew had done nothing worthy of death with a pathetic exordium on his own disinterestedness and virtue. He should have nothing to leave his children but his good name; and then he wept. The Solicitor General wept with his weeping chief. 'What is the Solicitor weeping for?' said one bystander to another. 'He is weeping to think how very little the Attorney will have to leave his children.'"[1]

NEMO ex proprio dolo consequitur actionem. It is a maxim of law that "a man shall not take advantage of his own wrong." The principle is as old as the time of Demosthenes. In the Oration against Leochares, he says: "It can never be just to regard a wrongful act as evidence for a party."

AN indictment charging that the defendant *forged* a certain writing obligatory by which A is *bound*, is void for its manifest inconsistency and repugnancy. The Court: "That is a wheel in a wheel, and can never be made good."[2]

[1] The North American Review, vol. CXIV. p. 78.
[2] The King v. Neck, 2 Show. 472.

A WRIT de ventre inspiciendo, returnable Tres Mich. on the behalf of Edward Ascough, Esq. and Elizabeth his wife, Anne Chaplin, spinster, Charles Fitzwilliams, and Frances his wife, co-heirs of Sir John Chaplin, Bart., their brother, against dame Elizabeth Chaplin, widow of the said Sir John. The writ was returned that the lady was with child, and a motion made for the safe custody of her until her delivery. It was suggested that the lady's mother was likewise with child, and therefore neither she nor any other woman with child were proper persons to be with her. The Court agreed that such a clause should be inserted in the writ; and ladies were named on the part of the prosecutors or heiresses to attend the lady during her pregnancy and till her delivery; but they must not name any spinster, and the mother was allowed to visit only.[1]

IN Kelyng's Reports is this passage: "At the Lent Assizes for Winchester, 18 Car. II. the clerk appointed by the bishop to give clergy to the prisoners, being to give it to an old thief, I directed him to deal clearly with me, and not to say *legit* in case he could not read; and thereupon he delivered the book to him, and I perceived the

[1] Ascough v. Lady Chaplin, Cooke 93, 3d ed.; S. C. 2 P. Wms. 591; 2 Eq. Cas. Ab. 780; Mosely, 391, A.D. 1730.

prisoner never looked upon the book at all, and yet the bishop's clerk, upon the demand of *legit*, or *non legit*, answered *legit*; and thereupon I wished him to consider, and told him I doubted he was mistaken, and bid the clerk of the assizes ask him again, *legit*, or *non legit*, and he answered again, something angrily, *legit*. Then I bid the clerk of the assizes not to record it; and I told the parson he was not the judge whether he read or no, but a ministerial officer, to make a true report to the Court. And so I caused the prisoner to be brought near, and delivered him the book, and then the prisoner confessed he could not read; whereupon I told the parson he had reproached his function, and unpreached more that day than he could preach up again in many days; and because it was his personal offence and misdemeanor, I fined him five marks, and did not fine the bishop, as in case he had failed to provide an ordinary."[1]

DISCRETION is a science or understanding to discern between falsity and truth, between wrong and right, between shadows and substance, between equity and colorable glosses and pretences, and not to do according to their wills and private affections; for as one saith, Talis discretio discretionem confundit.[2]

[1] Kel. 51; 82, 3d ed.

[2] Rooke's Case, 5 Rep. 100 a.

ONE of the most remarkable of the curiosities in the "books of Reports" is the case of Babcock v. Montgomery County Mut. Ins. Co. 4 N. Y. 326. The case decides that where a building was insured generally against loss by fire, and in a separate clause in the policy the insurers were declared liable for fire by lightning, no liability attaches for a loss occasioned by the building being struck by lightning, prostrated, and destroyed, but no ignition or combustion taking place. The extent and variety of the allusions in the opinion to the subject under discussion are certainly unique. The point was to determine whether "lightning" is "fire," the plaintiff contending that destruction by lightning in any manner is a destruction by fire. Mr. Justice Hurlbut alludes to three passages in the Bible, of which the passage from Job i. 16 is the most noteworthy: "The fire of God is fallen from heaven, and hath burned up the sheep and the servants, and consumed them." Allusions are made to the doctrines of Seneca, the Stoics, and Epicureans. Quotations are made from Milton's "Paradise Lost," and from Byron's "Childe Harold." The scientific treatises are examined; and the names of Descartes, Harris, Dr. Lardner, Franklin, Faraday, and Metcalf, appear in the discussion. A few law cases are cited; and the judge comes to the conclusion that "Electricity, caloric, or heat may so act, without produ-

cing fire, as to cause great injuries to property; but these are not embraced by an insurance against fire alone."

IN the great case, Bartonshill Coal Company v. Reid and McGuire,[1] who were both killed in the working of a mine by the negligence of a fellow-servant employed in the same common work, the reporter quaintly observes: "Reid and McGuire were both victims of the same accident, which, though melancholy, has settled the law," — doubtless a great satisfaction to the public, if not to Reid and McGuire.

"THE last time I opened Statham's Abridgment," says Fuller, "I lighted on this passage: 'Molendinarius de Matlock tollavit bis, eò quod ipse audivit Rectorem de eâdem villâ dicere in Dominicâ Ram. Palm. Tolle, tolle.'[2] 'The miller of Matlock took toll twice, because he heard the rector of the parish read on Palm Sunday, Tolle, i.e., crucify him, crucify him.'[3] But if this be the fruit of Latin service, to encourage men in felony, let ours be read in plain English."[4]

[1] 3 Macqueen, 266, 301 note. Quoted in Gilman v. Eastern Railroad Corporation, 10 Allen, p. 237.

[2] Statham, Tit. Toll., last case of the Title.

[3] The Gospel appointed for the day.

[4] Worthies, Derbyshire, vol. I. p. 256, ed. 1811.

MR. DUNNING, afterwards Lord Ashburton, was stating the law to a jury at Guildhall, when Lord Mansfield interrupted him by saying, "If *that* be law, I 'll go home and burn my books." — "My Lord" replied Dunning, "you had better go home and read them."

IF once a man indulges himself in murder, very soon he comes to think little of robbing; and from robbing he comes next to drinking and Sabbath-breaking, and from that to incivility and procrastination. Once begin upon this downward path, you never know where you are to stop. Many a man has dated his ruin from some murder or other that perhaps he thought little of at the time. — *De Quincey.*

IN a recent case, in which the indictment "surpassed in vagueness and uncertainty any precedent to be found in the books," Mr. Justice Fitzgerald observed: "A practice has recently prevailed of shaping indictments in so very general a form as to cast the smallest burden of proof on the prosecutor, in that they may be all right, but the prosecutor has, in the present instance, finessed too much." [1]

[1] White v. The Queen, I. R. 10 C. L. 536.

IT was decided, so early as the reign of Henry V. that a contract imposing a general restraint on trade is void. Indeed, Hull, J. flew into a passion at the very sight of a bond imposing such a condition, and exclaimed, with more fervor than decency, "A ma intent vous purres aver demurre sur luy que l'obligation est voide eo que le condition est encounter common ley, *et per Dieu, si le plaintiff fuit icy, il irra al prison tanque il ust fait fine au Roy.*"[1]

"IT has been said that circumstantial evidence is to be considered as a *chain*, and each piece of evidence as a link in the chain; but that is not so, for then, if any one link broke, the chain would fall. It is more like the case of a rope composed of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength."[2]

SCROGGS, CHIEF JUSTICE. — "As anger does not become a judge, so neither doth pity: for one is the mark of a foolish woman, as the other is of a passionate man."[3].

[1] Year Book, 2 Henry V. 5, 26, cited in 11 Rep. b, and in the Note to Mitchel v. Reynolds, 1 Smith L. C. 432, 7th London ed.

[2] Per Pollock, C. B. in Regina v. Exall, 4 Foster & Finlason, 929.

[3] The King v. Johnson, 2 Show. 4.

SIR WILLIAM BLACKSTONE, wrote that accomplished scholar, Malone, as Sir William Scott of the Commons observed to me a few days ago, was extremely irritable. He was the only man, my informant said, he had ever known who acknowledged and lamented his bad temper. He was an accomplished man in very various departments of science, with a store of general knowledge. He was particularly fond of architecture, and had written upon that subject. The notes which he gave me on Shakespeare show him to have been a man of excellent taste and accuracy, and a good critic. The total sum which he made by his "Commentaries," including the profits of his Lectures, the sale of the books while he kept the copyright in his own hands, and the final sale of the proprietorship to Mr. Cadell, amounted to fourteen thousand pounds. Probably the bookseller in twenty years from the time of that sale will clear ten thousand pounds by his bargain, and the book prove to be an estate to his heirs.

Blackstone made six hundred pounds a year by his professorship and Lectures, which, however, he thought it wise to relinquish for the chance of succeeding in Westminster Hall. Not having acquired a facility of expression, nor promptness of applying his law by early practice, he was always an embarrassed advocate. There were more new trials granted in causes which came

before him on circuit than were granted on the decisions of any other judge who sat at Westminster in his time. The reason was, that, being extremely diffident of his opinion, he never supported it with much warmth or pertinacity in the court above, if a new trial was moved for. With the little failings already mentioned, he was one of the finest writers and most profound lawyers that England has produced, considering law merely as a science. He was also a strictly conscientious, honest man. In his "Commentaries" he was much indebted to Hall, and Wood (particularly the latter) for the method and arrangement he has observed; but the perspicuity, the vigor, the luminous statement, the elegant illustration, and the classical grace by which his "Commentaries" are so eminently distinguished, were all his own.[1]

A TEDIOUS preacher had preached the assize sermon before Lord Yelverton. He came down, smiling, to his lordship, after the service, and, expecting congratulations on his effort, asked, "Well, my lord, how did you like the sermon?" — "Oh! most wonderfully," replied Yelverton. "It was like the peace of God: it passed all understanding, and, like his mercy, I thought it would have endured forever."

[1] Maloniana, from Prior's Life of Malone, p. 431.

THE famous judgment of Sancho Panza, acquitting the herdsman charged with rape, was founded on the ascertained fact that the prosecutrix successfully resisted the attempt to take her purse, which the accused made by order of the Court. "Sister of mine," said honest Sancho to the forceful but not forced damsel, "had you shown the same, or but half as much, courage and resolution in defending your chastity as you have shown in defending your money, the strength of Hercules could not have violated you."[1]

TWO men had been convicted at Chester of the most atrocious murder of a magistrate; but a dispute arose whether the sentence against them was to be carried into effect by the sheriff of the county of Chester, or by the sheriffs of the city of Chester. All the functionaries refusing to act, years might elapse before this dispute could be legally determined; and till then the murderers could not be made to expiate their offence under the sentence originally pronounced against them. There was a great outcry by reason of the law being thus defeated. Lord Campbell, then Attorney General, boldly brought the convicts to the bar of the King's Bench, and prayed that execu-

[1] Don Quixote, part 2, book 3, ch. 13, quoted in 1 Taylor Ev. § 215, 7th ed.

tion should be awarded against them by the judges of that court. After a demurrer and long argument, they were ordered to be executed by the marshal of the King's Bench, at Saint Thomas-a-Waterings in the borough of Southwark, aided by the sheriff of Surrey, — a form of proceeding which had not been resorted to for many ages. The execution took place accordingly, amidst an immense assemblage, not only from the metropolis, but from remote parts of the kingdom.[1]

AT a club dinner of artists a barrister present, having his health drunk in connection with the law, began an embarrassed answer by saying that he did not see how the law could be considered one of the arts. Jerrold quickly jerked in the word *black*, and sent the company into convulsions.

FOR modern law, Sergeant Hill had supreme contempt; and I have heard him observe that the greatest service that could be rendered the country would be to repeal all the statutes, and burn all the Reports which were of a later date than the Revolution.[2]

[1] Rex v. Garside and Mosley, 2 A. & E. 266. Life of Lord Campbell, vol. II. pp. 58, 59.

[2] Romilly, Memoirs, vol. I. p. 72.

IN the case of Dolan v. Kavanagh, I. R. 10 C. L. 166, the defendant was convicted for having exposed goods for sale outside his shop in a street in the city; but the place where they were so exposed was part of the premises of the defendant, over which the public had no right to pass. It was held that the defendant was guilty of an offence within the St. 5 Vict. ch. 24, § 17. The following is the judgment of Dowse, B.: —

"In this case the facts are beyond dispute. A private dwelling-house has been converted into a shop. The area has been covered over, and the iron railings next the street removed; the railing at right angles to the house has been left standing. On this covered area, flagged over and raised a little above the footpath proper, goods have been exposed for sale. The police, who are afflicted with fits of periodical activity, have summoned the defendant for an offence under the 5 Vict. ch. 24, § 17. That section in effect enacts that any person, who in any street or public place exposes for sale any thing on the outside of his house or shop, shall be subject to the penalty mentioned in this section. Can any one doubt that the place where these goods were exposed for sale was in a street? It is said that the covered area formed no portion of the footpath, and was never dedicated to the use of the public; that it was in fact part of the defendant's premises.

That may be; it is not the less in a street on that account. In one sense the street means the roadway and footpath; in another sense it has a more extended meaning. The house itself is in Talbot Street. The defendant lives in that street, yet he does not take up his abode in the roadway or on the footpath. Giving a reasonable construction to this statute, no one can doubt that these goods were exposed for sale in a street. If the steps of a hall-door are in the street, this place is in the street; and in my opinion it would be an abuse of terms to use the word 'street' in a sense that would exclude the flagging in front of a house from the operation of the section. It is possible to suggest cases where the flagging in front of a house would not be in a street, though the house itself may face a public thoroughfare. When these cases come before us, we shall be able to deal with them. The only remaining question is, Were these goods exposed for sale on the outside of the shop? It is here that the poetical imagination of the counsel for the defendant has run riot. He says this place is not on the outside of the shop. Where is it, then? Is it in the inside of the shop? He says it is; and it is so because he builds an imaginary wall from the extreme edge of the covered space, which is all the defendant's own ground, up to the sky, and when this wall is built, he says it is the outside wall of the shop, and

the goods are not then exposed on the outside of the shop. When this wall is built of stone, or brick, or timber, or any other substance of a tangible kind, there will be no exposure for sale on the street, and that which was outside will become inside; but, until that is done, I decline to construct a non-existent wall, and to construe an Act of Parliament by giving to 'airy nothings a local habitation and a name.' When 'Snout, the tinker' represented a wall, he brought with him some rough-cast and stone; we are to be more fantastic than the 'Midsummer Night's Dream,' and to build a wall without even the smallest thread of gossamer to assist us. If we build the wall, how long is it to endure? Till this case is over; and then, in this at least resembling the wall of the poet, it will say: —

> 'Thus have I, wall, my part discharged so;
> And, being done, thus wall away doth go.'

"I will be no party to this castle-building in the air. If the person convicted here wants an unsubstantial wall, let him have unsubstantial hams and bacon exposed for sale. If he gives merely a Barmecide feast to his customers congregated on the footpath, he need never fear the penalties contained in that very prosaic statute entitled An Act for Improving the Dublin Police. I can see no difficulty in this case. If I give loose reins to my

imagination, I do not know where I can stop. If inclined to be poetical, the last subject I shall choose for my muse will be any thing connected with the streets of Dublin."

IN the celebrated judgment of Lord Denman in O'Connell v. The Queen, is this passage: "If it is possible that such a practice as that which has taken place in the present instance should be allowed to pass without a remedy, trial by jury itself, instead of being a security to persons who are accused, will be *a delusion, a mockery, and a snare.*"[1]

NOBODY was more bitterly witty than Lord Ellenborough. A young lawyer, trembling with fear, rose to make his first speech, and began, "My Lord, my unfortunate client — my Lord, my unfortunate client — my Lord —" — "Go on, sir, go on," said Lord Ellenborough: "as far as you have proceeded hitherto, the Court is entirely with you."

[1] 11 Clark & Finnelly, at p. 351. Mr. Justice Denman adds a curious circumstance. Walking down with his father from the House after the delivery of the judgment, and praising, among other things, the celebrated words, "a mockery, a delusion, and a snare," "Ah," said Lord Denman, "I am sorry I used those words: they were not judicial." — Memoir of Lord Denman, vol. II. p. 183 note.

WITH respect to *children*, no precise age is fixed by law within which they are absolutely excluded from giving evidence, on the presumption that they have not sufficient understanding. Neither can any precise rule be laid down respecting the degree of intelligence and knowledge which will render a child a competent witness. In all questions of this kind much must ever depend upon the good sense and discretion of the judge.

The utter want of discretion in dealing with this subject, which has sometimes been evinced by the inferior functionaries of the law, is admirably ridiculed by Mr. Dickens, in his "Bleak House." A little crossing-sweeper being brought up before a coroner to give evidence on an inquest, the narrative thus proceeds: "'Name Jo. Nothing else that he knows on. . . . Knows a broom's a broom, and knows it's wicked to tell a lie. Don't recollect who told him about the broom, or about the lie, but knows both. Can't exactly say what'll be done to him arter he's dead if he tells a lie to the gentleman, but believes it'll be something very bad to punish him, and sarve him right; and so he'll tell the truth.'—'This won't do, gentlemen,' says the coroner, with a melancholy shake of the head. 'Don't you think you can receive his evidence, sir?' asks an attentive juryman. 'Out of the question,' says the coroner. 'You

have heard the boy: *can't exactly say* won't do, you know. We can't take that in a court of justice, gentlemen. It's *terrible depravity*. Put the boy aside.' Boy put aside to the great edification of the audience, especially of little Swills the comic vocalist."

"IF a man robs his fellow-traveller, and is indicted for so doing, the allegation that he became the companion of his victim with a preconceived design to rob him is wholly immaterial." [1]

IN the case of Prohibitions Del Roy, 12 Rep. 64, 65, is this passage: "A controversy of land between parties was heard by the King, and sentence given, which was repealed for this, that it did belong to the common law. Then the King said that he thought the law was founded upon reason, and that he and others had reason as well as the Judges: to which it was answered by me, that true it was, that God had endowed his Majesty with excellent science, and great endowments of nature; but his Majesty was not learned in the laws of his realm of England; and causes which concern the life, or inheritance, or goods, or fortunes of his subjects, are not to be decided by natural reason, but by the artificial reason and judgment of law,

[1] Moxon v. Payne, L. R. 8 Ch. 881, per James, L. J.

which law is an act which requires long study and experience, before that a man can attain to the cognizance of it; and that the law was the golden met-wand and measure to try the causes of the subjects; and which protected his Majesty in safety and peace: with which the King was greatly offended, and said that then he should be under the law, which was treason to affirm, as he said; to which I said, that Bracton saith, quod Rex non debet esse sub homine, sed sub Deo et lege. Bract. 74."

"IF we see one against whom there is a judgment of this court walk in Westminster Hall, we may send our officer to take him up, if the plaintiff desire it, without a writ of execution." — Per Holt, Chief Justice.[1]

IN NASH v. BATTERSBY, 2 Ld. Raym. 986 and 6 Mod. 80, the plaintiff declared with the addition of gentleman. The defendant pleaded in abatement that the plaintiff was no gentleman. The plaintiff demurred, and it was ill; for, said the Court, it amounts to a confession that the plaintiff is no gentleman, and then not the person named in the count. He should have replied that he is a gentleman.

[1] 7 Mod. 52.

BROUGHAM, speaking of the salary attached to a new judgeship, said it was all moonshine. "Maybe," said Lord Lyndhurst; "but I've a notion, that, moonshine or not, you would like to see the first quarter of it."

"WE easily believe what we wish to be true," said Mr. Justice Grier in a charge to a jury. "We are prone to be satisfied with light proof, or any fallacy, in favor of a preconceived opinion, prejudice, or feeling. When we suffer ourselves to be thus tempted, we act as tyrants, not as judges. In the midst of our virtuous indignation against crime, we first assume it has been committed, and then seek for arguments to confirm, not our judgments, but our prejudice. 'Trifles light as air' then become 'strong as proofs of holy writ.' Circumstances which to an unprejudiced mind are just as compatible with innocence as guilt, which at best could only raise a suspicion, are set down as conclusive evidence of crime. Those who sit in judgment over men's rights, whether as courts or jurors, should beware of this natural weakness to which we are almost all of us subject." [1]

"The human understanding," wrote Lord Bacon,

[1] Turner v. Hand, 3 Wallace, Jr. 112. The entire charge is particularly fine.

"when it has once adopted an opinion (either as being the received opinion or as being agreeable to itself), draws all things else to support and agree with it. And though there be a greater number and weight of instances to be found on the other side, yet these it either neglects and despises, or else by some distinction sets aside and rejects; prejudging the matter to a great and pernicious extent in order that the authority of its former conclusions may remain inviolate."[1]

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THE rule which requires a day to be specified, but does not require that day to be proved, appears to rest on much the same foundation as the argument used by Corporal Trim in telling his unfortunate story of the King of Bohemia. "There was a certain king of Bohemia, but in what year of our Lord," — "I would not give a halfpenny to know," said my Uncle Toby. "*Only, an' please your Honor, it makes a story look the better in the face.*" My Uncle Toby's reply, "Leave out the date entirely, Trim, a story passes very well without these niceties, unless one is pretty sure of 'em," is founded on good sense. Either allege a date, and prove it, or omit it altogether.

[1] Novum Organum, Aph. XLVI., Works, vol. IV. p. 56, ed. Ellis & Spedding.

IN the case of Musselman v. Musselman, in the Indiana Reports, vol. 44, p. 107, A.D. 1873, we find among others the two following head-notes: —

"Where it does not appear, on appeal, how smoking in court by the judge and attorneys prevented a party from having a fair trial, and the party assigning such conduct as a ground for a new trial does not appear to have objected to it, there is nothing for the Supreme Court to consider in relation to such conduct."

"The assignment as a reason for a new trial, 'that the Court erred in sleeping, or sitting with his eyes closed, during the reading of the written evidence on the part of the plaintiff at the trial of the cause,' is too vague and indefinite. If the judge were asleep, the party should have ceased reading, or awakened him; if he sat merely with his eyes closed, it is presumed he did so to hear the more acutely."

THERE have been many eulogies on trial by jury; but this spoken by Sir James Mackintosh, in his defence of Jean Peltier, charged with a libel on Bonaparte, First Consul, is probably unsurpassed in beauty: "He now comes before you, perfectly satisfied that an English jury is the most refreshing prospect that the eye of accused innocence ever met in a human tribunal." [1]

[1] Mackintosh's Miscellaneous Works, vol. III. p. 245.

THE rule excluding hearsay evidence, or rather the mode in which that rule is frequently misunderstood in courts of justice, is amusingly caricatured by Mr. Dickens, in his report of the case of Bardell v. Pickwick: —

"'I believe you are in the service of Mr. Pickwick, the defendant in this case. Speak up, if you please, Mr. Weller.'

"'I mean to speak up, sir,' replied Sam. 'I am in the service o' that 'ere gen'l'man, and werry good service it is.'

"'Little to do, and plenty to get, I suppose?' said Sergeant Buzfuz with jocularity.

"'Oh! quite enough to get, sir, as the soldier said ven they ordered him three hundred and fifty lashes,' replied Sam.

"'*You must not tell us what the soldier*, or any other *man said*, sir,' interposed the judge, '*it's not evidence.*'

"'Wery good, my lord,' replied Sam."

A STORY is told of one Smith who was made a police magistrate. He was a pompous, stupid man, very attentive to forms, but frequently ignorant how to apply them. The very first day he sat in his public capacity he made a blunder that stuck by him ever after. A man was brought up before him for picking pockets. Mr. Smith

seemed to have reflected deeply, and prepared a speech, of which he was anxious to deliver himself. He heard the case, therefore, with all the solemnity of a trial for murder. He listened with the profoundest attention to all the evidence, and then, taking a three-cornered hat in his hand, he thus addressed the prisoner with the utmost gravity: "Thomas Styles, you have been found guilty, on the clearest evidence, of the abominable crime of picking pockets. The testimony of the witnesses has been clear and satisfactory, and no doubt of your heinous guilt remains. It now only remains for me to pass the dreadful sentence of the law. The sentence of the Court on you is, that you be taken hence to the prison at Cold Bath Fields; that you be there confined for the space of one month, be once privately whipped before you quit it; and (putting on the hat, and looking at the prisoner with the most sorrowful solemnity) *God have mercy on your wretched soul!*"

IN the time of Henry VI. it seems not to have been a settled point whether an action might be maintained against an innkeeper for refusing a lodging; and it appears to have been the better opinion, that the proper remedy was to complain to the ruler of the vill, or the constables of the place.[1]

[1] Year Book, 39 Hen. VI. p. 18. 5 Edw. IV. p. 2.

WHEN the proceedings have been entered upon record, the common law power of amendment ceases; for the judges at common law were prohibited from allowing alterations to be made in any record; and indeed several of them were, during the reign of Edward the First, severely punished for so doing, among whom the Lord Chief Justice Hengham was fined, according to some, seven thousand, to others, eight hundred, marks, which sum, as we are told by Justice Southcote,[1] was expended in building a clock-house at Westminster, with a clock to be heard in the Hall, — a circumstance which, as is observed by Mr. Justice Coleridge, in his admirable edition of Blackstone's Commentaries, explains a dictum of Lord Holt,[2] where his lordship, refusing to amend a record, said, "He considered there wanted a clock-house over against the Hall-gate."[3]

A LATE venerable practitioner in a humble department of the law, who wanted to write a book, and was recommended to try his hand at a translation of Latin law-maxims as a thing much wanted, was considerably puzzled with the maxim, "Catella realis non potest legari;" nor was he quite relieved when he turned up his Ainsworth,

[1] 3 Inst. 72. 4 Inst. 255. [2] Anon. 6 Mod. 130.
[3] Note to Robinson v. Raley, 1 Smith L. C. 248, 2d London ed.

and found that catella means "a little puppy." There was nothing for it, however, but obedience, so that he had to give currency to the remarkable principle of law that "a genuine little whelp cannot be left in legacy." He also translated "messis sequitur sementem," with a fine simplicity, into "the harvest follows the seedtime;" and "actor sequitur forum rei" he made, "the agent must be in court when the case is going on." Copies of the book containing these gems are exceedingly rare, some malicious person having put the author up to their absurdity.

THERE are two old methods of paying rent in Scotland, — Kane and Carriages; the one being rent in kind from the farmyard, the other being an obligation to furnish the landlord with a certain amount of carriage, or rather, cartage. In one of the vexed cases of domicil which had found its way into the House of Lords, a Scotch lawyer argued that a landed gentleman had shown his determination to abandon his residence in Scotland by having given up his "kane and carriages." It is said that the argument went further than he expected, the English lawyers admitting that it was indeed very strong evidence of an intended change of domicil when the laird not only ceased to keep a carriage, but actually divested himself of his walking-cane.

WHEN it was proposed in Parliament to increase the judges' salaries, and the motion was carried by one hundred and sixty-nine to thirty-nine, Charles Townshend said that "the Book of Judges had been saved by the Book of Numbers."

THIS passage occurs in Sir Vicary Gibbs's[1] argument in the Banbury Peerage:[2] —

"Age may not be proof of impotency, but it is evidence of it. The probability of the Earl's begetting a child at eighty is very slight, and it is not increased by the appearance of another child two years later. Instances have been adduced of these extraordinary births; but none have been cited in which a man at eighty-two, having begotten a son, had concealed the birth of such son. Would not he seek publication rather than concealment? Besides, at the birth of children in families of distinction, it is generally an object of much anxiety to have the event authenticated. Some registry is made of it. None has been found here after the most diligent search. If the register is lost, the date may always be supplied by the banquets and festivities with which it is contemporaneous. Why, the whole county would have

[1] At the time Attorney General.

[2] Reported in an Appendix to Le Marchant's Gardner's Peerage, 427, 428.

resounded with the ringing of bells! You would have had processions of old men upon the anniversary of such a prodigy. It would have excited as much surprise as if a mule had been brought to bed! It reminds me of the lines of Juvenal: —

> Ergegium sanctumque virum si cerno, bimembri
> Hoc monstrum puero, vel mirandis sub aratro
> Piscibus inventis, et fetæ comparo mulæ.
>
> *Sat. XIII.* 65.

"In no register, in no will, in no document, is there any notice of this wonderful production. And then, not content with one, the miracle must be multiplied. It was not enough that one child should be born to a man at eighty-two: he must have another when he was eighty-four. And Nature consummated her prodigality by lavishing on these children the strength and vigor which she usually denies to the offspring of imbecility."

IN a case in the Court of Queen's Bench, a plaintiff, as soon as he had discovered the fact, applied to set aside a judgment in his own favor, on the ground of a mistake having been made by himself in the amount claimed and recovered, although the debt and costs had been actually paid by the defendants. The Court, in furtherance of justice, allowed him to do so.[1]

[1] Cannon v. Reynolds, 5 E. & B. p. 301.

KELYNG reports a mode of dealing with a prisoner who refused to plead, by tying his two thumbs together with whipcord, "that the pain of that might compel him to plead." He says that this was the "constant practice at Newgate." In the particular case reported, the whipcord, with the aid of a parson, produced the desired effect in an hour.[1]

IN delivering the judgment of the Privy Council in a recent case,[2] Sir John Taylor Coleridge thus eloquently discoursed of the advantages of the vivâ voce examination of witnesses: "The most careful notes often fail to convey the evidence fully in some of its most important elements, — those for which the open oral examination of the witnesses in presence of prisoner, judge, and jury, is so justly prized. It cannot give the look or manner of the witness, his hesitation, his doubts, his variations of language, his confidence or precipitancy, his calmness or consideration; it cannot give the manner of the prisoner, when that has been important, upon the statement of any thing of particular moment. It is, in short, or it may be, the dead body of the evidence, without its spirit, which is supplied, when given openly and orally, by the ear and eye of those who receive it."

[1] Kel. 27; 34, 3d ed.

[2] Regina v. Bertrand, L. R. 1 P. C. 535; S. C. 10 Cox C. C. 625.

A PEER was once branded by *mistake.* Sir Matthew Hale writes: "A great lawyer hath been much blamed for burning a peer on the hand, that confessed an indictment for manslaughter; and it was the only error of note that that person erred in to my observation."

QUI hæret in litera hæret in cortice is a familiar maxim in the law. "The letter killeth, but the spirit maketh alive," is the more forcible expression of Scripture.[1]

A STORY is told of a house seeming irretrievably on fire, until the flames, coming in contact with the folio Corpus Juris and the Statutes at Large, were quite unable to get over this joint barrier, and sank defeated.

LORD ELLENBOROUGH showing some impatience at a barrister's speech, the gentleman paused and said: "Is it the pleasure of the Court that I should proceed with my statement?" —"Pleasure, sir, has been out of the question for a long time; but you may proceed."

[1] Per Parker, C. J. in Henshaw v. Foster, 9 Pick. 317. "The letter killeth, but the spirit giveth life."—2 Cor. iii. 6.

MR. JUSTICE WELLS, in charging the jury in a capital case, in defining what is a reasonable doubt, once said: "A man might so cultivate a doubt as not to be able to believe any thing; yet such a doubt was not a reasonable one."

IN the case of Ryves v. The Attorney General, which attracted so much notice a few years since, where Mrs. Ryves attempted to establish her claim to royal lineage, this occurrence is reported: "Dr. Smith then proceeded to address the jury for the petitioner, and was beginning to say that 'on his honor he believed his client's case to be well founded,' when the Lord Chief Justice interfered, and peremptorily said he 'could not allow the learned counsel to pledge his honor on his own belief. To do so were a violation of the rules of the profession, and a dishonor to counsel.' Dr. Smith apologized." [1]

LORD KENYON, on the trial of Hadfield for firing a loaded pistol at the King when sitting in a box at the theatre of Drury Lane, told the jury, that, "if the scales hung any thing like even, it was their duty to throw in a certain proportion of mercy."

[1] The North American Review, April, 1871, p. 393.

ANY over-great penalty, besides the acerbity of it, deadens the execution of the law. — *Lord Bacon.*

THE possession of stolen property *recently* after the commission of a theft is primâ facie evidence that the possessor was either the thief or the receiver, according to the other circumstances of the case; and this presumption, when unexplained either by direct evidence or by the character and habits of the possessor, or otherwise, is usually regarded by the jury as conclusive. This presumption, which in all cases is one of *fact* rather than of law, is occasionally so strong as to render unnecessary any direct proof of what is called corpus delicti.

Thus, to borrow an apt illustration from Mr. Justice Maule, if a man were to go into the London Docks quite sober, and shortly afterwards were found very drunk, staggering out of one of the cellars in which above a million gallons of wine are stored, "I think," says the learned judge, — and most persons will probably agree with him, — "that this would be reasonable evidence that the man had stolen some of the wine in the cellar, though no proof were given that any particular vat had been broached, and that any wine had actually been missed."[1]

[1] Regina v. Burton, Dearsly C. C. 284.

IN 1692 William Bradford was tried before two Quaker judges for printing an obnoxious pamphlet. An amusing incident occurred at the trial. The Prosecution wished to prove that Bradford had printed the pamphlet, — a fact of which there was no legal evidence. He had taken care that no one should see him print it. Mr. Attorney brought in the *form*, already seized by him, on which the pamphlet had been printed. The discovery was received with exultation by the prosecuting party. Bradford contended rightly that the *form* was no proof against him until they had shown that he had printed from it. Still it was put as proof before the jury. Unable, however, to read the matter from the types, without looking at them closely, the foreman began to press the chase along the panel. Of a sudden the *quoins* got loose, and the mass of type fell through, a pile of indecipherable *pi!* The evidence had disappeared by magic.[1]

THE keeper of the jail in Oxford having in his custody one Alice de Droys, condemned for felony, and reprieved for pregnancy, suffered her to go abroad under the guard of a servant. She making her escape, the master was saved by benefit of clergy; but the servant was hanged.[2]

[1] Mr. J. W. Wallace's Bradford Address, pp. 56, 57.
[2] Kennett's Paroch. Antiq. vol. I. p. 234.

IN 1841, relative to the trial of Warren Hastings, Lord Macaulay wrote: "The result ceased to be matter of doubt from the time when the Lords resolved that they would be guided by the rules of evidence which are received in the inferior courts of the realm. Those rules, it is well known, exclude much information which would be quite sufficient to determine the conduct of any reasonable man in the most important transactions of private life. These rules, at every assizes, save scores of culprits whom judges, jury, and spectators firmly believe to be guilty. But when those rules were rigidly applied to offences committed many years before, at the distance of many thousands of miles, conviction was of course out of the question. We do not blame the accused and his counsel for availing themselves of every legal advantage in order to obtain an acquittal; but it is clear that an acquittal so obtained cannot be pleaded in bar of the judgment of history."

THE Statute of Merton, so called because the Parliament or Council sat at the Priory of Merton in Surrey, was passed in the twentieth year of the reign of Henry III. A.D. 1236. It is a remarkable fact that women were summoned to this council.[1]

[1] Spilsbury's Lincoln's Inn and Library, pp. 200, 201.

IN the very heart of all legal formality and technicality, — the Statutes at Large, — some funny things may be found. The best that now occurs to the memory is not to be brought to book, and must be given as a tradition of the time when George III. was King. Its tenor is, that a bill which proposed, as the punishment of an offence, to levy a certain pecuniary penalty, one half thereof to go to his Majesty, and the other half to the informer, was altered in committee, in so far that when it appeared in the form of an Act, *the punishment* was changed to whipping and imprisonment, *the destination* being left unaltered.

ONE day at dinner, Curran sat opposite Lord Norbury, who was famous for his severity as a judge. "Curran," asked Norbury, "is that hung beef before you?" — "You try it, my Lord," answered Curran, "and it's sure to be."

"WHY, L., your office is as hot as an oven," said a client. "So it ought to be," replied the lawyer: "*I make my bread here.*"

"AS right signifieth law, so tort, crooked or wrong, signifieth injury." — 2 Inst. 56.

HERE is a brief extract from a law-paper, for the full understanding of which it has to be kept in view that the pleader, being an officer of the law who has been prevented from executing his warrant by threats, is required, as a matter of form, to swear that he was really afraid that the threats would be carried into execution.

"Farther depones that the said A. B. said, that, if deponent did not immediately take himself off, he would pitch him (the deponent) down stairs; which the deponent verily believes he would have done.

"Farther depones, that, time and place aforesaid, the said A. B. said to deponent, 'If you come another step nearer, I'll kick you to hell;' which the deponent verily believes he would have done."

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"LET this be the method of taking down judgments, and committing them to writing," says Lord Bacon. "Record the cases precisely, the judgments themselves word for word; add the reasons which the judges allege for their judgments; do not mix up the authority of cases brought forward as examples with the principal case; and omit the perorations of counsel, *unless they contain something very remarkable.*"[1]

[1] De Augmentis, bk. VIII. aph. 74, vol. V. p. 104, ed. Spedding.

ARUNDINES CAMI. This beautifully printed volume consists of Greek and Latin translations, chiefly from the English poets, most of which are translated with exquisite skill. Here is a specimen: —

LAW AND EQUITY.

Law and Equity are two things which God has joined, but which man has put asunder. — *Colton.*

JUS INJURIA.

Justitiam Numen junxit cum Lege; sed eheu!
Quas junxit Numen, dissociavit Homo.

IN COMMONWEALTH v. MERRIAM, 14 Pick. 518, which was an indictment for adultery, it was held that other instances of improper familiarity between the defendant and the same woman might be given in evidence to corroborate the witness. But such evidence is rejected, the Court say, "where it tends to show a *substantial act* of adultery on a different occasion."[1]

AN Irish crier being ordered to clear the court did so by this announcement: "Now, then, all ye *blackguards* that isn't *lawyers*, must lave the coort."

[1] Thayer v. Thayer, 101 Mass. 112.

IN Walpole's "Noble Authors" is recorded an anecdote of the third Earl of Shaftesbury. Attempting to speak on the bill for granting counsel to prisoners in cases of high treason, he was confounded, and for some time could not proceed; but recovering himself, he said: "What now happened to him would serve to fortify the arguments for the bill — if he, innocent, and pleading for others, was daunted at the augustness of such an assembly, what must a man be who should plead before them for his life?"

WHEN Sir Thomas More was Lord Chancellor, he enjoined a gentleman to pay a good round sum of money unto a poor widow whom he had oppressed; and the gentleman said: "Then I do hope your lordship will give me a good long day to pay it." — "You shall have your request," said Sir Thomas. "Monday next is St. Barnabas Day, the longest day in all the year; pay her then, or else you shall kiss the Fleet."[1]

IN 1838 the vulgar error that an innkeeper might detain the person of his guest until payment of his bill, was exploded by the case of Sunbolf v. Alford, 3 M. & W. 248.

[1] Camden's Britannia, p. 300, ed. 1870.

IN a case in the Year Books, 22 & 23 Edward I. p. 448, a counsel makes a very apposite Scriptural quotation. Metingham, Chief Justice, says: "If my vilein beget a child on my land, which is vileinage, and the child so begotten go out of the limits of my land, and six or seven or more years afterwards return to the same land, and I find him in his own nest at his own hearth, I can take him and tax him as my vilein; for the reason that his return brings him to the same condition as he was in when he went." Heiham of counsel responds: "He fell into the pit which he hath digged."

THE defendant charged the plaintiff with having attempted to burn the defendant's house. Wray, C. J., held that the words were actionable, assigning generally as the reason, that "by such speech the plaintiff's good name is impaired."[1]

AN Irishman swearing the peace against his three sons thus concluded his affidavit: "And this deponent further saith, that the only one of his children who showed him any real filial affection was his youngest son Larry, for he *never struck him when he was down.*"

[1] Edwards' Case, Cro. Eliz. 6.

ON the trial of Spencer Cowper for murder, A.D. 1699,[1] Dr. Crell, a physician, in the course of his testimony, addressing the Court, Baron Hatsell said: —

"Now, I will give you the opinion of several ancient authors."

BARON HATSELL. — "Tell us your own observations."

DR. CRELL. — "It must be reading, as well as a man's own experience, that will make any one a physician; for without the reading of books of that art, the art itself cannot be attained to; besides, I humbly conceive that in such a difficult case as this we ought to have a great deference for the reports and opinions of learned men. Neither do I see any reason why I should not quote the fathers of my profession in this case as well as you gentlemen of the long robe quote Coke upon Littleton in others."

IN Jenkins's Centuries it is said: "A, a woman of twelve years of age, marries B, of thirteen years of age; A. has issue; this is a bastard in our law. Yet some write that Solomon begat Rehoboam at ten years of age, by computation of time out of the Scriptures."[2]

[1] 13 Howell State Trials, 1163.

[2] Cent. VII. Cas. 26. See also Cent. II. Cas. 84, citing Year Book, 1 Henry VI. 3.

AT a sitting of the Dublin Court of Exchequer, Baron Richards found it necessary to administer a rebuke to Mr. Whiteside, Solicitor General. Mr. Whiteside demanded in a declamatory manner, and in an unusual style, that the Court should give its reasons for the course taken in the case, and expressed regret that there was no appeal from its decision. Baron Richards said he had too much reliance upon the gentlemen of the bar to fear that such a style of addressing the Court would be adopted as a precedent. "Mr. Whiteside has referred to the performance of my duty as a commissioner in the Incumbered Estates Court," said the judge; "he has no right to inflict upon me the odium of his panegyric. I disclaim his comment, and reject his praise."

FULBECK gives the following quaint definition of arrest: "Arrestare is, by the authority or warrant of the law, to hinder that either a man or his goods be at his own liberty, until the law be satisfied."

"I APPREHEND," said Mr. Justice Cresswell, "that where in our law Reports we find the expression 'public policy,' it is used somewhat inaccurately, instead of 'the policy of the law.'" [1]

[1] 4 House of Lord Cases, p. 87.

IN Lord Campbell's "Lives of the Chancellors"[1] the following passage occurs in the account of the trial of Sir Thomas More: "The jury, biassed as they were, seeing that if they credited all the evidence, there was not the shadow of a case against the prisoner, were about to acquit him; the judges were in dismay, the Attorney General stood aghast, when Mr. Solicitor, to his eternal disgrace and to the eternal disgrace of the Court who permitted such an outrage on decency, left the bar, and presented himself as a witness for the Crown. Being sworn, he detailed the confidential conversation he had had with the prisoner in the Tower on the occasion of the removal of the books."

IN Gibbon's History of the Decline and Fall of the Roman Empire, ch. 50, it is stated, that, by the law of Mohammed, a woman could not be convicted of adultery unless on the testimony of *four male* witnesses; and his successor, the Caliph Omar, decided, with reference to this law, that all circumstantial evidence, however proximate and convincing, was of no avail, and that the four male witnesses must have witnessed the very act in the strictest sense of the word. This is one extreme. For the opposite the reader is referred to the case of Commonwealth v. Merriam, 14 Pick. 518.

[1] Vol. II. p. 61, 4th ed. quoted in 1 Cush. 520 note.

THERE are very many cases of murder more venial than many cases of manslaughter. A slaps B in the face, B stabs him: this is manslaughter. A shoots at a fowl, intending to steal it; one grain of shot hits B, who dies of lock-jaw a month after: this is murder. The fowl, instead of a hen, is a wild partridge: it is manslaughter. A, B, C, D, and E are stealing apples; F, the owner of the tree, collars A, who resists. B, C, D, and E throw stones at him, and the stone thrown by D kills him: this is murder in all five. A has reason to think that B has seduced his wife; runs home, finds some evidence (though not conclusive evidence) of the fact, and stabs B: this is "manslaughter of the lowest degree." [1]

IN the "Epistle Dedicatory" to the book entitled "Some Considerations Touching the Style of the Holy Scriptures," by the Honorable Robert Boyle, Esq. 4to, 1675, we read as follows: "It is not always so despicable a piece of service as may be imagined to endear by particular considerations an excellent book to a person capable of discovering and making use of the rare things it contains. To which purpose I might offer you diverse more serious instances, but shall only at

[1] Per Watson B. in Regina v. Davies, Liverpool Summer Assizes, 1857.

present (a little to divert you) take this occasion to tell you that Ben Jonson passionately complaining to a learned acquaintance of mine that a man of the long robe, whom his wit had raised to great dignities and power, had refused to grant him some very valuable thing he had begged of him, concluded with saying, with an upbraiding tone and gesture to my friend: '*Why, the ungrateful wretch knows very well, that, before he came to preferment, I was the man that made him relish Horace.*' Surely this is very characteristic. Boyle's 'learned acquaintance' was of course Selden, with whom he is known to have been intimately associated, and the man of the long robe 'whose wit had raised him to great dignities and power,' was no doubt Jonson's old ally, Sir John Davies, the Lord Chief Justice."[1]

"THE right to a trade-mark is a right closely resembling, though not exactly the same as, copyright." — Per Lord Cranworth, 11 H. L. Cas. 533.

"WHERE the rigor of law bordereth upon injustice, mercy should, if possible, interpose in the administration."[2]

[1] Works of Ben Jonson, vol. I. p. ix. ed. Cunningham.
[2] Foster, Disc. Hom. 264, and Disc. High Treas. 184.

WHEN counsel were disputing sharply in the Dean of St. Asaph's case a piece of evidence, one of them saying, "We can prove this to be the prosecutor's letter," and the other retorting, "I beg leave to say you cannot, it is not evidence," Lord Kenyon interposed, with a sort of learned charm, "modus in rebus, there must be an end of things." These bits of classicality, sometimes as inapplicable as if they had been picked up at random from a dictionary of quotations, are amusingly caricatured in that miscellany of legal anecdotes, "Westminster Hall." The learned lord is there represented concluding an elaborate charge of the jury with the observation: "Having thus discharged your consciences, gentlemen, you may retire to your homes in peace, with the delightful consciousness of having performed your duties well, and may lay your heads upon your pillows and say, "Aut Cæsar aut nullus.'"

On another occasion, his lordship, wishing to illustrate in a strong manner the conclusiveness of some fact, ended by remarking: "It is as plain as the noses on your faces, — 'Latet anguis in herbâ!'"[1]

"IT often happens," said Chief Justice Chapman in a capital trial, "that experts can be found to testify to any theory, *however absurd*."[2]

[1] Townsend's Lives of Twelve Judges, vol. I. pp. 78, 79.
[2] Trial of Samuel M. Andrews, p. 256.

IN the case of Tynte v. The Queen, 7 Q. B. 216, judgment was reversed on error, after a lapse of one hundred and sixteen years.[1]

THE constant publication of cases in support of clear law is excessively tiresome, and irresistibly calls to mind the amusing colloquy in "Much Ado About Nothing:" —

DON PEDRO. — I think this is your daughter.

LEONATO. — Her mother hath many times told me so.

BENEDICK. — Were you in doubt, sir, that you asked her so often?

[1] This was a writ of error brought to reverse a judgment of outlawry against Philip, Duke of Wharton.

It appeared that the Duke of Wharton, by his will, made a few weeks before his death, and proved in the Prerogative Court of Dublin, Dec. 7, 1736, left all his goods, effects, and worldly substance, to the then duchess, his second wife, and ordered that the following inscriptions should be engraven on a stone, to be fixed upon his burial place, —

> "Vixi, et quam dederat cursum fortuna peregi:"
>
> "Thy fame shall live when pyramids of pride
> Mix with the ashes they were raised to hide:"

thus exhibiting to the end of his life the "ruling passion," "lust of praise," by which Pope has characterized him in the Epistle to Lord Cobham. His treason against George the Second, a fact hardly important enough for history, is kept in remembrance by the "Moral Essay" of the satirist, and by the epigrammatic notice of Philip, Duke of Wharton, in Walpole's "Catalogue of Royal and Noble Authors."

THERE is a natural standing court within us, examining, acquitting, and condemning at the tribunal of ourselves, wherein iniquities have their natural thetas,[1] and no nocent[2] is absolved by the verdict of himself. And although our transgressions shall be tried at the last bar, the process need not be long; for the Judge of all knoweth all, and every man will nakedly know himself; and when so few are like to plead not guilty, the assize must soon have an end.[3]

A PRISONER being called on to plead an indictment for larceny was told by the clerk to hold up his right hand. The man immediately held up his left hand. "Hold up your *right* hand," said the clerk. "Please your Honor," said the culprit, still keeping up his left hand, "I am *left-handed*."

IN truth, as was said by Chief Justice Wilmot, "the common law is nothing else but statutes worn out."[4]

[1] A theta inscribed upon the judge's tessara, or ballot, was a mark for death, or capital condemnation.

[2] Judice nemo nocens absolvitur. — Juv. *Sat.* XIII. 2, 3.

[3] Sir Thomas Browne, Christian Morals, vol. IV. pp. 69, 70, ed. Pickering.

[4] Collins v. Blantern, 2 Wils. 341, quoted by Willes, J., in Pickering v. Ilfracombe Railway Co. L. R. 3 C. P. 250.

THE precise time when the system of reporting began cannot now be ascertained. Sir John Davies, in the preface to his Reports, thinks that although those in print and those scattered in the Abridgments were not found higher than the time of Henry III., "yet assuredly there were other Reports digested in years and terms as ancient as the time of King William the Conqueror." He does not pretend to more than a conjecture; and when Chaucer, in the Prologue to the Canterbury Tales, says of the Sergeant, —

> "In tearmés he case and domés all
> That from the time of King William was fall,"—

it is not to be inferred that he vouches for the existence of Reports of such an early date: he is only magnifying the learning, and swelling the number of accomplishments, of the character which he is describing. The existence at any time of a continuous series of Reports from the time of the Conquest is not probable.[1]

THE intrinsic weakness of hearsay evidence is one of the reasons why it is inadmissible.

> Pluris est oculatus testis unus, quam auriti decem;
> Qui audiunt, audita dicunt, qui vident, planè sciunt.
>
> PLAUT. *Trucu.* act ii. sc. 6, ll. 8, 9.

[1] Preface Year Books, 30 & 31 Edward I. p. xvi.

IN the case of Day v. Micou, 18 Wallace, 156, the plaintiff in error claimed certain estate formerly owned by Hon. Judah P. Benjamin, and purchased at a sale under the confiscation act by Mr. Day, who argued his own cause before the Supreme Court of the United States. His original brief was in the ordinary form, presenting nothing unusual, perhaps, except the Greek verse with which it concluded. But before the cause came on for hearing, Mr. Day prepared a preliminary page, which he had bound up with his brief, in calf, in which he moved to strike out the opening sentence: "This is a writ of error to the Supreme Court of Louisiana," and substitute the following, which is literally copied, preserving capitals, italics, etc.: —

"MAY IT PLEASE THE COURT: When 'The Bonnie Blue Flag' went down before 'The Star Spangled Banner,' and that glorious emblem of 'The Union, the Constitution, and the Enforcement of the Laws' again waived in triumph

'From Maine's dark pines and crags of snow
To where magnolia breezes blow,'

it was fondly hoped that civil strife and contention were at an end, and that peace, quiet and repose had returned to bless the land. But these were

'Hopes which but allured to fly;'

they were, indeed, but

'Joys that vanished while we sipp'd.'

For scarcely had the roar of artillery ceased, and the smoke of the battle cleared off, and scarcely had the ink become dry on the parchments of Pardon, which fell from the Executive hand

'Thick as the autumnal leaves that strew the brooks
In Vallombrosa,'

before some

'of the last few who, vainly have,'

and who would theoretically, merely,

'Die for the cause they could not save,'

*rushed into the Courts, renewed the contest in another form*, and we are here to-day on a writ of error to the Supreme Court of Louisiana to reverse a victory obtained in this *new mode* of hostility and attack upon the power and authority of the United States, and the rights of one firmly based upon the same."

After listening to so many of the plaintiff's ideas as the limited time allowed him to ventilate, the Court declined to hear argument from the defendant,[1] and affirmed the judgment of the Supreme Court of Louisiana.

[1] 18 Wallace, 160.

...TON once judicially observed that a ... distinction appeared to him "*to be too*

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...very man his due," wrote Lord Ba... ...d it not been for Sir Edward Coke's ... though they may have errors, and ... very and extra-judicial resolutions ... warranted, yet they contain infinite ... and rulings over of cases), the law ... had been almost like a ship without ... that the cases of modern experience ... those that are adjudged and ruled in ...[3]

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...NMAN, C. J., once said: "I remem... ...on tried before Gibbs, C. J., brought ...man Wood by a man whom he had ... imprisoned; and it was contended ... imprisonment was illegal, because the ... did not also direct that he should be ... Gibbs, C. J., said to the jury: "Give ... full damages he has sustained by ...ving been whipped."[4]

...gton, 2 V. & B. 79, 84, cited in 1 Jones on

...that the bulk of our ballast has now well ...l justice.

...XIII. p. 65, ed. Spedding.

...Queen ... J. M. C. 166.

A VERY ugly old barrister, arguing a point of practice before Plunket, claimed to be received as an authority. "I am a pretty old practitioner, my lord." — "An *old* practitioner, Mr. S.," was Plunket's correction.

WALPOLE, in his "Royal and Noble Authors," speaks of Lord Somers as "One of those divine men, who, like a chapel in a palace, remain unprofaned, while all the rest is tyranny, corruption, and folly."

THE classics illustrate and embellish the Commentaries of Kent. In vol. III. p. 234 note, is this passage: "Emerigon, I. 609, has beautifully illustrated, from Juvenal, the growth and progress of an irregular jettison, and that imminent danger and absorbing terror which justify it. At first the skill of the pilot fails: —

> nullam prudentia cani
> Rectoris conferret opem.

Catullus becomes restless with terror as the danger presses, and at last he cries: —

> Fundite, quæ mea sunt, dicebat, cuncta, Catullus
> Præcipitare volens etiam pulcherrima, vestem
> Purpuream."

THE Term Reports, when they use the very language of Lord Kenyon, often contain a series of broken metaphors. For example: "If an individual can *break down* any of those safeguards which the Constitution has so wisely and so cautiously erected, by *poisoning* the minds of the jury at a time when they are called upon to decide, he will *stab* the administration of justice in its most vital parts." [1]

AN Irishman was once brought up before a magistrate, charged with marrying six wives. The magistrate asked him how he could be so hardened a villain. "Please, your worship," says Paddy, "I was trying to *get a good one.*"

A STRANGER to law-courts, hearing a judge call a sergeant "brother," expressed his surprise. "Oh!" said one present, "they are brothers, — *brothers-in-law.*"

ONE witness, of his own knowledge, and another of hearsay from him, though at the third or fourth hand, are two sufficient witnesses in high treason.[2]

[1] Townsend's Lives of Twelve Judges, vol. I. p. 79.

[2] Marginal note to Thomas's Case, Dyer, 99 b, quoted in Phillimore Ev. 136.

LORD COKE, in half a page, on the subject of the Court of Chivalry, quotes extracts from Lucan, Tacitus, Seneca, Cicero, Sallust, Aristotle, Vegetius, Lipsius.[1] As a specimen of his quotation, in treating of the Courts of the Forest,[2] he writes: "And seeing we are to treat of game and hunting, let us (to the end we may proceed the more cheerfully) recreate ourselves with the excellent description of Dido; that Doe of the Forest, wounded with a deadly arrow stricken in her, and not impertinent to our purpose." He then quotes six lines, beginning, —

> Uritur infelix Dido, totâque vagatus
> Urbe furens, qualis conjecta cerva sagittâ, etc.

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ACCURACY is the first duty of a reporter; clearness is another; brevity is also essential. To convey the fullest information in the least space is, therefore, one canon of reporting. To borrow the quaint language of Sydney Smith, the reporter "should think upon Noah and the ark, and be brief. The ark should constantly remind him of the little time there is left for reading; and he should learn, as they did in the ark, to crowd a great deal of matter into a very little space."

[1] He says, "to cite verses standeth well with the gravitie of our lawyers."

[2] 4 Inst. 289.

IT has been said of Blackstone's Commentaries, that they have been so often patched, that they will soon resemble Sir John Cutler's *silk* stockings, from which every particle of silk had been displaced by darnings of worsted.

A LEARNED judge being asked the difference between law and equity courts, replied: "At common law you are done for at once; at equity you are not so easily disposed of. One is *prussic acid*, and the other *laudanum*.

A CUNNING juryman addressing the clerk of the court when administering the oath, said, "Speak up: I cannot hear what you say." — "Stop: are you deaf?" asked Baron Alderson. "Yes, of one ear." — "Then you may leave the box; for it is necessary that jurymen should hear *both sides*."

"WHEN a man is taken in adultery with another man's wife, if the husband shall stab the adulterer, or knock out his brains, this is bare manslaughter; for jealousy is the rage of a man, and adultery is the highest invasion of *property*."[1]

[1] Regina v. Mawgridge, Kel. 137; 186, 3d ed.

## SPECIMEN OF SCRIBLERUS'S REPORTS.

### STRADLING *v.* STILES.[1]

Le report del case argue en le commen banke devant touts les justices de le mesme banke, en le quart. An. du raygne de roy *Jaques*, entre *Matthew Stradling*, plant. & *Peter Stiles*, def. en un action propter certos equos coloratos, *Anglicè*, pyed horses, post. per le dit *Matthew* vers le dit *Peter*.

Le recitel del Case.

SIR JOHN SWALE, of Swale-Hall in Swale-Dale fast by the River Swale, kt. made his last Will and Testament: in which, among other Bequests was this, *viz.* Out of the kind love and respect that I bear unto my much honoured and good friend Mr. *Matthew Stradling*, gent. I do bequeath unto the said *Matthew Stradling*, *all my black and white horses.* The Testator had six black horses, six whi e horses, and six pyed horses.

Le point.

The Debate therefore was, Whether or no the said Matthew Stradling should have the said pyed horses by virtue of the said Bequest.

Pour le pl.

Atkins apprentice pour le pl. may semble que le pl. recovera.

[1] The exquisite burlesque on the old Reports entitled "Stradling v. Stiles" is often erroneously attributed to Swift and Dr. Arbuthnot; but it seems really to have been the joint composition of Pope and Mr. Fortescue (afterwards in 1736 made a Baron of the Exchequer), and who was, says Sir Walter Scott, "*though* a lawyer, a man of great humor, talents, and *integrity*." Swift, Works, vol. xiii. p. 138, ed. Scott.

And first of all it seemeth expedient to consider what is the nature of horses, and also what is the nature of colours; and so the argument will consequently divide itself in a twofold way, that is to say, the formal part, and substantial part. Horses are the substantial part, or thing bequeathed: black and white the formal or descriptive part.

Horse, in a physical sense, doth import a certain quadrupede or four-footed animal, which, by the apt and regular disposition of certain proper and convenient parts, is adapted, fitted, and constituted, for the use and need of man. Yea so necessary and conducive was this animal conceived to be to the behoof of the commonweal, that sundry and divers acts of Parliament have from time to time been made in favour of horses.

1st Edw. VI. Makes the transporting of horses out of the kingdom no less a penalty than the forfeiture of £40.

2nd and 3rd Edward VI. Takes from horse-stealers the benefit of their clergy.

And the statutes of the 27th and 32nd of Henry VIII. condescend so far as to take care of their very breed: These our wise ancestors prudently foreseeing, that they could not better take care of their own posterity, than by also taking care of that of their horses.

And of so great esteem are horses in the eye of the common law, that when a Knight of the Bath committeth any great and enormous crime, his punishment is to

have his spurs chopt off with a cleaver, being, as master Bracton well observeth, unworthy to ride on a horse.

Littleton, Sect. 315, saith, If tenants in common make a lease reserving for rent a horse, they shall have but one assize, because, saith the book, the law will not suffer a horse to be severed. Another argument of what high estimation the law maketh of an horse.

But as the great difference seemeth not to be so much touching the substantial part, horses, let us proceed to the formal or descriptive part, viz. what horses they are that come within this Bequest.

Colours are commonly of various kinds and different sorts; of which white and black are the two extremes, and consequently comprehend within them all other colours whatsoever.

By a bequest therefore of black and white horses, grey or pyed horses may well pass; for when two extremes, or remotest ends of any thing are devised, the law, by common intendment, will intend whatsoever is contained between them to be devised too.

But the present case is still stronger, coming not only within the intendment, but also the very letter of the words.

By the word black, all the horses that are black are devised; by the word white are devised those that are white; and by the same word, with the conjunction copulative, and, between them, the horses that are black and white, that is to say, pyed, are devised also.

Whatever is black and white is pyed, and whatever is pyed is black and white; *ergo*, black and white is pyed, and *vice versa*, pyed is black and white.

If therefore black and white horses are devised, pyed horses shall pass by such devise; but black and white horses are devised; *ergo*, the pl. shall have the pyed horses.

Pour le Defend.

Catlyne Serjeant: may semble al' contrary, the plaintiff shall not have the pyed horses by intendment; for if by the devise of black and white horses, not only black and white horses, but horses of any colour between these two extremes may pass, then not only pyed and grey horses, but also red and bay horses would pass likewise, which would be absurd, and against reason. And this is another strong argument in law, *Nihil, quod est contra rationem est licitum;* for reason is the life of the law, nay the common law is nothing but reason; which is to be understood of artificial perfection and reason gotten by long study, and not of man's natural reason; for *nemo nascitur artifex*, and legal reason *est summa ratio;* and therefore if all the reason that is dispersed into so many different heads, were united into one, he could not make such a law as the law of England; because by many successions of ages it has been fixed and refixed by grave and learned men; so that the old rule may be verified in it, *Neminem oportet esse legibus sapientiorem.*

As therefore pyed horses do not come within the intendment of the bequest, so neither do they within the letter of the words.

A pyed horse is not a white horse; neither is a pyed a black horse; how then can pyed horses come under the words of black and white horses?

Besides, where custom hath adapted a certain determinate name to any one thing, in all devises, feoffments and grants, that certain name shall be made use of, and no uncertain circumlocutory descriptions shall be allowed; for certainty is the father of right and the mother of justice.

Le rest del argument jeo ne pouvois oyer, car jeo fui disturb en mon place.

Le court fuit longement en doubt' de c'est matter; et apres grand deliberation eu,

Judgment fuit donne pour le pl. nisa causa.

Motion in arrest of judgment, that the pyed horses were mares; and thereupon an inspection was prayed.

Et sur ceo le court advisare vult.

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WHEN Baron Martin was at the Bar, and addressing the Court of Exchequer in an insurance case, he was interrupted by Baron Alderson observing, "Mr. Martin, do you think any office would insure your life? Remember, yours is a *brief* existence."

ALBEIT beginnings of this study seem difficult, yet when the professor of the law can dive into the depth, it is delightfull, easie, and without any heavy burthen, so long as he keepe himselfe in his own proper element. — Co. Litt. 71 a.

MR. JUSTICE GOULD was trying a case at York, and when he had proceeded for about two hours, he observed: "Here are only eleven jurymen in the box: where is the twelfth?" — "Please you, my lord," said one of the eleven, "he has gone away about some other business; *but he has left his verdict with me!*"

MR. JUSTICE PUTNAM, in considering the subject of the conclusiveness of judgments, remarked, that, if the principle were otherwise, "The law would become a game of frauds, in which the greatest rogue would become the most successful player."[1]

"HURRAH! Hurrah!" cried a young lawyer who had succeeded to his father's practice, "I've settled that old Chancery suit at last." — "*Settled it!*" cried the astonished parent, "why, I gave you that as *an annuity* for your life."

[1] M'Rae v. Mattoon, 13 Pick. 58.

"COSTS as between party and party are given by the law as an indemnity to the person entitled to them: they are not imposed as a punishment on the party who pays them, nor given as a bonus to the party who receives them." [1]

HENRY FOX, in a hot attack on Lord Chancellor Hardwicke, who was supposed to have no desire to reform the many abuses of his office, exclaimed: "Touch but a cobweb in Westminster Hall, and the old spider of the Law is out upon you with all his vermin at his heels." [2]

THE person of Lord Ellesmere is described as remarkable for its venerable gravity, and many went to the Court of Chancery to see him in his "pomp and circumstance;" on which Fuller quaintly observes, "happy they who had no other business there!"

THE old English lawyers occasionally rejected the evidence of women on the ground that they are *frail*.[3]

[1] Per Bramwell, B., in Harold v. Smith, 5 H. & N. 385.

[2] The North American Review, July, 1854, p. 151.

[3] Best Ev. § 64, citing Fitzh. Abr. Villenage, pl. 37. Bro. Abr. Testmoignes, pl. 30.

DISCRETIO est discernere per legem quid sit justum. — 4 Inst. 41.[1]

THE case of State v. Neely, 74 N. C. 425, shows what evidence is sufficient in the opinion of the majority of the Court to convict a negro of an assault with attempt to commit a rape. The dissenting opinion of Mr. Justice Rodman is entertaining, and quite as convincing as that of the majority of the Court.

MAJUS dignum trahit ad se minus dignum. — 1 Inst. 43 b. An adulterer takes the wife of another man, and new clothes her; the husband may take with his wife the clothes on her back.[2]

IT is felony in the sheriff to behead one who was sentenced to be hanged.[3]

THE Almanac is part of the law of England.[4]

[1] Quoted by Tindal, C. J., in Regina v. Darlington, 6 Q. B. 700.
[2] Year Book, 11 Henry IV. 4, 31.
[3] Year Book, 35 Henry VI. 58.
[4] Per Pollock, C. B., in Tutton v. Dark, 5 H. & N. 647. 6 Mod. 41. 6 Mod. 81.

THE Commentary of Lord Coke upon Littleton will be admired, says Fuller, "by judicious posterity while Fame has a trumpet left her, and any breath to blow therein."

BRITTAIN v. KINNAIRD, 1 B. & B. 432. "This case has come to be the locus classicus of Sir J. Richardson." [1]

IN a trial at the Newcastle assizes, before Mr. Justice Bayley against a blacksmith for a nuisance, the plaintiff's daughter, a sprightly girl, stated that the sparks came in at the window of her bedroom. Sergeant Hullock, in cross-examination, retorted: "Nay, where so pretty a girl is, don't they oftener come in at the door?"

SIR JAMES DYER, in his Reports, after stating the opinion of himself and some of his brothers, concludes, not very urbanely: "But Baldwin was of a contrary opinion; though neither I, nor any one else, I believe, understood his refutation." [2]

[1] Per Lord Coleridge, C. J., in Usill v. Hales, 47 L. J. C. P. 326.
[2] 1 Dyer, 43 a.

WE will conclude this volume with a single Pensée from Joubert: —

Only just the right quantum of wit should be put into a book: in conversation, a little excess is allowable. "And for a farewell to our jurisprudent," in the language of Lord Coke, "I wish unto him the gladsome light of jurisprudence, the lovelinesse of temperance, the stabilitie of fortitude, and the soliditie of justice."